

No. 12194

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MABEL E. WEST,

Appellant,

vs.

W. E. CONRAD and HOWARD F. CONRAD,

Appellees.

TRANSCRIPT OF RECORD

Appeal from the United States District Court for the
Southern District of California
Central Division

FILED

APR 14 1949

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

GEORGE W. MANIERRE

PAUL G. BRECKENRIDGE

307 West Eight Street, Suite 814
Los Angeles 14, Calif.

For Appellees:

LEONARD WILSON

ARNOLD L. LEADER

650 South Grand Avenue
Los Angeles 14, Calif. [1*]

*Page number appearing at foot of Certified Transcript.

In the District Court of the United States
Southern District of California
Central Division
No. 8207-Y.

MABEL E. WEST,

Plaintiff,

v.

W. E. CONRAD and HOWARD F. CONRAD,
Defendants.

FIRST AMENDED COMPLAINT AS A MATTER
OF COURSE FOR DAMAGES UNDER THE
FEDERAL PRICE CONTROL ACTS, AND FOR
ATTORNEYS' FEES AND COSTS

To the Honorable, the Judges of said District Court:

Comes now the plaintiff, Mabel E. West, and files this her amended complaint as a matter of course, and for cause of action against the defendants, alleges as follows:

I.

That plaintiff brings this action in pursuance of the provisions of Section 205 of the Housing and Rent Act of 1947, which specifically confers jurisdiction upon this court to hear and determine the matter.

II.

That at all times herein mentioned the plaintiff and the defendants were, and that they are now, residents of the County of Los Angeles, in said Central Division of the Southern District of California. [10]

III.

That plaintiff is informed and believes, and upon such information and belief alleges the fact to be that the de-

defendants W. E. Conrad and Howard F. Conrad are respectively father and son, and plaintiff alleges that the written lease hereinafter referred to and a copy of which is hereunto attached marked "Exhibit A", was executed by defendant W. E. Conrad as lessor; that all negotiations and payments had and made by plaintiff were respectively with and to said defendant W. E. Conrad; that the record title to the real property described in said lease was prior to the execution of said lease transferred by said defendant W. E. Conrad to the defendant Howard F. Conrad; that plaintiff at this time is unable to state whether said defendant W. E. Conrad in the acts herein complained of was acting as the agent of the defendant Howard F. Conrad, the holder of the record title to said real property as undisclosed principal, or whether said defendant W. E. Conrad was, in the acts herein complained of, acting on his own behalf as the real owner of said real property or otherwise; that by reason of the aforesaid, plaintiff is in some doubt as to whether she is entitled to recover from defendant W. E. Conrad or from defendant Howard F. Conrad or from both of said defendants; that said defendants have been joined herein for the purpose and with the intent that the question as to which of said defendants is, or whether both defendants are liable to plaintiff may be determined in this action, and that the court may award judgment to plaintiff against said defendants either jointly, severally or in the alternative as to the court may seem proper.

IV.

That on or about the 4th day of March, 1947, the defendant W. E. Conrad as lessor, and the plaintiff, as lessee, entered into a certain written lease of that certain dwelling [11] house situated at 7462 Hollywood Boulevard in the City of Los Angeles in said County for the

term of two (2) years commencing on the 15th day of March, 1947 and ending on the 14th day of March, 1949, at the total rent or sum of eight thousand four hundred dollars (\$8,400.00) payable monthly in advance on the 15th day of each and every calendar month of said term in equal monthly installments of three hundred and fifty dollars (\$350.00), under which lease it was further provided that the lessee should deposit an additional sum of three hundred and fifty dollars (\$350.00) to cover the last month of the term of said lease; that a copy of said lease is hereunto attached, marked "Exhibit A" and made a part hereof as if herein fully set forth and alleged; that at the time of making said lease plaintiff was wholly unaware that a maximum legal rent for said dwelling house had been established as hereinafter set forth.

V.

That plaintiff entered into possession of said dwelling house on or about the 15th day of March, 1947, and from thence hitherto has been in possession thereof; that prior to entering into possession of said dwelling house, plaintiff paid to defendant W. E. Conrad the sum of seven hundred dollars (\$700.00), being the rental of said dwelling house for the first and last months of the term of said lease, and that on or about the 15th day of each and every month following the 15th day of March, 1947, to and including the 15th day of April, 1948, plaintiff has paid defendant W. E. Conrad the sum of three hundred and fifty dollars (\$350.00), such payments being in each case payment in advance of the monthly rental prescribed by said lease.

VI.

That under the provisions of the Emergency Price Control Act of 1942 and of said Act as amended, the

maximum [12] rent established for said dwelling house was the sum of seventy-five dollars (\$75.00) per month, and that, from the first day of May, 1942 to the date of the verification of this amended complaint, the said sum of seventy-five dollars (\$75.00) has been the maximum or "ceiling" rent of said dwelling house. .

VII.

That defendant W. E. Conrad has demanded, accepted and received payment of rent in excess of the maximum rent prescribed under the authority of the Emergency Price Control Act of 1942 and of said Act as amended, and as prescribed under the authority of the Housing and Rent Act of 1947, to the extent of two hundred and seventy-five (\$275.00) per month in excess of the prescribed maximum rent for fourteen (14) months last past, and for the last month of the term of said lease; that plaintiff has paid to defendant W. E. Conrad the sum of three thousand three hundred dollars (\$3,300.00) in excess of such prescribed maximum rent within one year last past, and eight hundred and twenty-five dollars (\$825.00) in excess of such prescribed rent for the first, second and last months of the term of said lease.

VIII.

That under the provisions of said acts, plaintiff is entitled to recover of and from said defendants her reasonable attorneys' fees and costs as may be determined by the court, plus liquidated damages in the amount of three times the amount by which the payments made by plaintiff to defendants within one year last past have exceeded

the maximum rent which defendant could lawfully demand, accept or receive.

IX.

That defendants are indebted to plaintiff in the sum of nine thousand nine hundred dollars (\$9,900.00) for liquidated damages for rent paid in excess of the prescribed [13] maximum rent as aforesaid within one year last past, together with the reasonable fees of plaintiff's attorneys and cost as may be determined by this Honorable Court.

X.

That plaintiff has been compelled to employ attorneys to represent her in this action, and to that end has employed Messrs. George W. Manierre and Paul G. Breckenridge, attorneys at law in good standing in the State Bar of California, and duly admitted to practice before this Honorable Court, and has incurred a liability to them for their reasonable fees as such attorneys.

Wherefore plaintiff prays judgment against said defendants (1) for the sum of nine thousand nine hundred dollars (\$9,900.00) as liquidated damages; (2) for such sum as may be determined by this Honorable Court as and for her reasonable attorneys' fees; (3) for her costs of suit; and (4) for such other and further relief as may seem to the court to be proper.

GEORGE W. MANIERRE and
PAUL G. BRECKENRIDGE

By G. W. Manierre

Attorneys for Plaintiff [14]

EXHIBIT "A"

HOUSE LEASE

This Indenture, made the 4 day of March, 1947 Between W. E. Conrad, Lessor (whether one or more); And Mabel E. West, Lessee (whether one or more); Witnesseth: That for and in consideration of the payment of the rents, and the performance of the covenants contained herein, on the part of the said Lessee, and in the manner hereinafter specified, said Lessor does hereby lease, demise and let, unto the said Lessee, that certain Studio dwelling house and its appurtenances situated at 7462 Hollywood Blvd To be used as a Guest Home, or any other lawful purpose, conforming with laws, ordinances, regulations or rules of any public authorities Lessee to carry Public Liability Insurance insuring Lessor against any and all liability for injuries to persons in or about said premises Lessee shall have the right to sublet any portion of the demised premises Lessee shall not have the right to sell or assign this lease with out the written consent of Lessor. Lessee shall pay all gas and electricity Lessee shall take care of all minor repairs. for the term of Two Years, commencing on the 15 day of March, 1947, and ending on the 14 day of March, 1949, at the total rent or sum of Eight Thousand Four Hundred (\$8400.00) --- Dollars, payable monthly in advance on the 15 day of each and every calendar month of said term in equal monthly payments of Three Hundred Fifty --- (\$350.00) --- Dollars, The first monthly rental of \$350.00 payable March 6, 1947 at time of signing lease, as an additional

consideration for the execution of this lease by the Lessor, the Lessee shall deposit an additional sum of \$350.00 and the Lessor agrees that if at the terms of this lease, and if the Lessee shall pay all of the rentals provided under the within lease, when said rent becomes due, during said period, have truly observed, performed and abided by each and all of the covenants, in such event the Lessor agrees that the Lessee may enjoy the use of the demised premises from Feb. 15, 1949 to March 15, 1949 without payment of rent therefor. Two car garage and play house adjoining same to be included in said lease Lessee [15] hereby agrees and states that she has personally examined the demised premises and accepts said premises in the present condition, all improvements shall be at the sole expense of the Lessee.

And the said Lessee does hereby promise and agree to pay to the said Lessor the said rent, herein reserved in the manner herein specified. And ~~not to let or sublet the whole or any part of said premises~~, nor to assign this lease, and not to make or suffer any alteration to be made therein without the written consent of the said Lessor. And it is further agreed, that the said Lessor shall not be called upon to make any improvements or repairs whatsoever upon the said premises, or any part thereof, but the said Lessee agrees to keep the same in good order and condition at her own expense.

Lessor to take care of Lawn and shrubs.

Lessee to take care of own garbage, tin cans and burning papers, etc.

And it is agreed, that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said Lessor to re-enter the said premises and to remove all persons therefrom.

And That at the expiration of the said term or any sooner determination of this lease the said Lessee will quit and surrender the premises hereby demised, in as good order and condition as reasonable use and wear thereof will permit, damages by the elements excepted. And if the Lessee shall hold over the said term with the consent, expressed or implied, of the Lessor, such holding shall be construed to be a tenancy only from month to month, and said Lessee will pay the rent as above stated for such term as she hold.... the same. Lessor agrees to pay the water rate during the continuance of this lease. If the water should run in excess of \$6.00 per month said Lessee to pay all over and above said amount.

In Witness Whereof: the said parties have hereunto set their hands and seals the day and year first above written.

W. E. CONRAD

MABEL E. WEST [16]

[Verified.]

[Endorsed]: Filed May 26, 1948. Edmund L. Smith, Clerk. [17]

[Title of District Court and Cause]

ANSWER TO FIRST AMENDED COMPLAINT

To the Honorable, the Judges of the said District Court:

Come now the defendants, W. E. Conrad and Howard F. Conrad, and file this, their Answer to the First Amended Complaint herein on file, and in so doing admit, deny and allege as follows:

I.

Answering Paragraph I of the First Amended Complaint herein on file, defendants deny generally and specifically that Section 205 of the Housing and Rent Act of 1947 specifically, or in any other manner, confers jurisdiction upon this Court to hear and determine this matter, and in this connection the defendants allege that the subject matter of this action, more particularly, the issue of damage under the aforementioned Federal legislation, is not within the jurisdiction of this Honorable Court, the subject premises having been by the defendant, W. E. Conrad, let and demised to the plaintiff herein for purposes exempt and not contained within the scope of the aforementioned Federal regulation, [18] nor any other Federal regulations.

II.

Answering Paragraph II of the First Amended Complaint herein on file, defendants deny generally and specifically that they are father and son respectively, and further deny that the defendant, W. E. Conrad, was at any time herein mentioned the acting agent of the defendant, Howard F. Conrad, and further deny that the defendant,

Howard F. Conrad, was the principal of the defendant, W. E. Conrad, either as the disclosed or undisclosed principal, and further deny that either of the defendants is liable to the plaintiff herein in any manner whatsoever, either jointly, severally or in the alternative.

III.

Answering Paragraph IV of the First Amended Complaint herein on file, defendants deny generally and specifically that at the time of the making of the lease therein referred to the plaintiff was unaware either wholly or partially that a maximum legal rent had been established in and to the premises located at 7462 Hollywood Blvd., but in this connection, the defendants do affirmatively allege that plaintiff was at all times aware that a maximum legal rent had been determined in and to said premises in so far only, however, that said premises were to be used and occupied for dwelling purposes and as a dwelling house; the defendants, in this connection, further allege that at all times mentioned in said complaint said premises were leased and demised to the plaintiff for business purposes, and the plaintiff did at all times therein mentioned occupy and use said premises for business purposes, and that but for plaintiff's promise and representation that said premises would be used for business purposes, said premises would not have unto her been let or demised, and at all times therein mentioned, plaintiff represented to the defendants that said premises would by her be used for business purposes, and [19] that said representations, as hereinbefore mentioned, were relied upon by the defendants, and that but for said representations and promises, as aforesaid, by plaintiff, defendants would not have permitted the occupancy of the premises by the plaintiff, nor would defendants have entered into the aforementioned lease agreement with the plaintiff.

IV.

Answering Paragraph V of the First Amended Complaint herein on file, defendants deny each and every allegation therein contained both generally and specifically and more particularly deny that the sums of money alleged therein to have been paid by the plaintiff to the defendant, W. E. Conrad, were paid as rental for a dwelling house, but rather allege that all sums of money paid by the plaintiff to the defendant, W. E. Conrad, were paid for plaintiff's occupancy of the subject premises for business purposes, it at all times therein mentioned having been represented by the plaintiff that said property would by her be used for business purposes and that said premises were not to be by her used as a dwelling house.

V.

Answering Paragraph VI of the First Amended Complaint herein on file, defendants deny each and every allegation therein contained both generally and specifically.

VI.

Answering Paragraph VII of the First Amended Complaint herein on file, defendants deny generally and specifically each and every allegation therein contained and more particularly deny that the plaintiff has paid to the defendant, W. E. Conrad, and that the defendant, W. E. Conrad, has received \$275.00 per month, or any other sum, in excess of the prescribed rent for the subject premises, either for fourteen months, or for any other period, and further deny that the plaintiff has paid to the defendant, [20] W. E. Conrad, or that the defendant, W. E. Conrad, has received the sum of \$3,300.00, or any other sum, in excess of the maximum rent of the subject premises, and further deny that the plaintiff has paid to

the defendant, W. E. Conrad, or that the defendant, W. E. Conrad, has received the sum of \$825.00 in excess of said prescribed rent, either for the first, second and last month's rent, or for any other term or months, and further deny that there is any maximum rent governing the subject premises under any governmental regulations whatsoever whether they be Federal or State.

VII.

Answering Paragraph VIII of the First Amended Complaint herein on file, defendants deny generally and specifically each and every allegation therein contained.

VIII.

Answering Paragraph IX of the First Amended Complaint herein on file, defendants deny each and every allegation therein contained both generally and specifically, and in this connection, the defendants allege that they are not indebted to the plaintiff in the sum of \$9,900.00, or any other sum whether as liquidated or other damage.

For a First, Separate and Distinct affirmative defense to the First Amended Complaint herein on file, defendants allege as follows:

I.

That at all times mentioned in said First Amended Complaint, the defendant, W. E. Conrad, leased unto the plaintiff the subject premises for business purposes only; that the defendant, W. E. Conrad, was informed and believed, and still believes, that the subject premises being situated within an area within the city of Los Angeles designated by the zoning officials of said municipality [21] as a permissible area and zoned for the conducting therein of certain businesses and which zoning regulations promulgated as hereinbefore mentioned have been ap-

proved by the City Council of said municipality, could be legally and legitimately leased for the purpose of conducting therein the permissible businesses therein, as hereinbefore mentioned.

II.

That at a time prior to the 5th day of March, 1947, the plaintiff herein did request of the defendant, W. E. Conrad, that she be permitted to lease and occupy the subject premises for the purpose of conducting therein a business, more particularly, a sanitarium and convalescent home for ill and infirm persons; that said plaintiff there and then did state to the said defendant that she would conduct and operate therein the aforementioned business and that she would do so in conjunction with the operation of another and different sanitarium also by her operated.

III.

That the said defendant, in reliance upon said representations by the plaintiff, and in good faith, entered into a written agreement with the said plaintiff thereby letting and demising unto her the said premises; that said plaintiff offered and the said defendant assented to plaintiff's offer of \$350.00 per month as rent; that at all times herein mentioned the said defendant believed, and still believes that the plaintiff has at all times conducted a business, as aforesaid, within said premises.

For a Second, Separate and Distinct affirmative defense to the complaint herein on file, the defendants allege as follows:

I.

That at all times herein mentioned, the plaintiff did unlawfully, maliciously, knowingly and fraudulently represent and state to the defendant, W. E. Conrad, that she would occupy, [22] maintain, conduct and operate within

the subject premises, a business; that said representations by the plaintiff made to the said defendant, at all times herein mentioned, were made with the intent and purpose of making the said defendant rely thereupon and that said defendant did rely thereupon in good faith, and that pursuant to said reliance and good faith, and in confidence upon the aforesaid statements and representations by the plaintiff made, did lease and demise to said plaintiff the subject premises.

II.

That said representations were knowingly made by the plaintiff to the said defendant with the deliberate and conceived intent that she would be enabled thereby at a later date to bring before this Honorable Court the present proceedings and thereby unjustly, illegally and unlawfully procure a judgment herein for damages for the alleged violation, as hereinbefore in the First Amended Complaint herein on file set forth, and that but for the aforementioned representations by the plaintiff made to the said defendant the defendants would not have entered into the aforementioned lease with the plaintiff nor have accepted from the plaintiff rent in any amount.

Wherefore, the defendants, W. E. Conrad and Howard F. Conrad, pray that plaintiff take nothing by reason of her complaint (First Amended Complaint) and that the defendants be hence dismissed with their costs.

LEONARD WILSON and
ARNOLD L. LEADER

By Arnold L. Leader

Attorneys for Defendants [23]

[Verified.]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 18, 1948. Edmund L. Smith,
Clerk. [24]

[PLAINTIFF'S EXHIBIT NO. 1]

HOUSE LEASE

This Indenture, made the 4 day of March, 1947 Between W. E. Conrad, Lessor (whether one or more); And Mabel E. West, Lessee (whether one or more);

Witness: That for and in consideration of the payment of the rents, and the performance of the covenants contained herein, on the part of the said Lessee, and in the manner hereinafter specified, said Lessor does hereby lease, demise and let, unto the said Lessee, that certain Studio dwelling house and its appurtenances situated at 7462 Holly Blvd To be used as a Guest House, or any other lawful purpose, conforming with laws, ordinances, regulations or rules of any public authorities Lessee to carry Public Liability Insurance insuring Lessor against any and all liability for injuries to persons in or about said premises Lessee shall have the right to sublet any portion of the demised premise Lessee shall not have the right to sell or assign this lease with out the written consent of Lessor. Lessee shall pay all gas and electricity Lessee shall take care of all minor repairs. for the term of Two Years, commencing on the 15 day of March, 1947, and ending on the 14 day of March, 1949, at the total rent or sum of Eight Thousand Four Hundred (8400.00) --- Dollars, payable monthly in advance on the 15 day of each and every calendar month of said term in equal monthly payments of Three Hundred Fifty --- (\$350.00) --- Dollars, The first monthly rental of \$350.00 payable March 6, 1947 at time of signing lease, as an additional consideration for the execution of this lease by the Lessor, the Lessee shall deposit an additional sum of \$350.00 and the Lessor agrees that if the terms of this lease, and if the Lessee shall pay all of the rentals

provided under the within lease, when said rent becomes due, during said period, have truly observed, performed and abided by each and all of the covenants, in such event the Lessor agrees that the Lessee may enjoy the use of the demised premises from Feb. 15, 1949 to March 15, 1949 without payment of rent therefor.

Two car garage and play house adjoining same to be included in said lease.

Lessee hereby agrees and states that she has personally examined the demised premises and accepts said premises in the present condition, all improvements shall be at the sole expense of the Lessee.

And the said Lessee does hereby promise and agree to pay to the said Lessor the said rent, herein reserved in the manner herein specified.

And not to let or sublet the whole

~~And not to let or sublet the whole or any part of said premises,~~ nor to assign this lease, and not to make or suffer any alteration to be made therein without the written consent of the said Lessor. And it is further agreed, that the said Lessor shall not be called upon to make any improvements or repairs whatsoever upon the said premises, or any part thereof, but the said Lessee agrees to keep the same in good order and condition at her own expense.

Lessor to take care of Lawn and shrubs.

Lessee to take care of own garbage, tin cans and burning papers etc.

And it is agreed, that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said Lessor to re-enter the said premises and to remove all persons therefrom. [25]

And that at the expiration of the said term or any sooner determination of this lease the said Lessee will quit and surrender the premises hereby demised, in as good order and condition as reasonable use and wear thereof will permit, damages by the elements excepted. And if the Lessee shall hold over the said term with the consent, expressed or implied, of the Lessor, such holding shall be construed to be a tenancy only from month to month, and said Lessee will pay the rent as above stated for such term as she hold.... the same. Lessor agrees to pay the water rate during the continuance of this lease. If the water should run in excess of \$6.00 per month said Lessee to pay all over and above said amount.

In Witness Whereof: the said parties have hereunto set their hands and seals the day and year first above written.

W. E. Conrad
Mabel E. West

No..... House Lease W. E. Conrad Lessor to
Mabel E. West Lessee Dated March 15, 1947

Case No. 8207-Y. Mabel E. West vs. W. E. Conrad et al. Plf. Exhibit 1. Date Oct. 12, 1948. No. 1 in Evidence. Clerk, U. S. District Court, Sou. Dist of Calif. John A. Childress, Deputy Clerk. [25A]

[PLAINTIFF'S EXHIBIT NO. 2]

Copy

Form DD-U

This is a copy of the Registration in Area Files.

Landlord's Copy

UNITED STATES OF AMERICA
OFFICE OF TEMPORARY CONTROLS
OFFICE OF PRICE ADMINISTRATION
Registration of Rental Dwellings

(Type or Print Plainly—Do Not Fold)

(Do Not Use This Form for Hotels and Rooming Houses)

GENERAL INSTRUCTIONS

The landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete this Registration Statement in triplicate. (If not typewritten, be sure sufficient pressure is used so that both carbon copies are clear and distinct.) Remove carbons, and mail or bring the three copies to the Area Rent Office. Use extra sheets, in triplicate, for sections "D" & "E" if necessary.

Maximum Rent Date 3-1-42 Effective Date 11-1-42

IDENTIFICATION

1. Mary LeGrange 7462 Hollywood Blvd.
Address of this rental dwelling unit
2.
Apartment number or location
3. Number of Rooms in unit being registered eight
4. Total Number of dwelling units in this structure two

Section A. Mailing Address of Landlord

1. Name of Landlord H. F. Conrad

2. Name of Agent W. E. Conrad

3. Address Mail to:

Name W. E. Conrad

Address 7464 Hollywood Blvd.

City and State Los Angeles, California

Section B. Mailing Address of Tenant

Name of Tenant Mary LeGrange

Address 7462 Hollywood Blvd.

City and State Los Angeles, California

Section C. Maximum Rent

Read carefully and fill in every item which applies to this dwelling unit.

1. Rent on "Maximum Rent date" \$75.00 per week ()
per month (x)

* * * * *

7. The Maximum Rent For This Dwelling Unit Is:

→ \$75.00 per week () per month (x)

* * * * *

Section D. Equipment and Services

(Check the equipment and services included in the rent on "Maximum Rent date" or the most recent date you entered in Section C.) (Answer "Yes" or "No".)

1. Equipment	Yes	No	2. Services	Yes	No
Furniture	[]	[x]	Garage	[x]	[]
Running Water	[x]	[]	Heat or Heating		
Hot Water	[x]	[]	Fuel	[]	[x]
Flush Toilet	[x]	[]	Cooking Fuel	[]	[x]
Bathroom	[x]	[]	Cold Water	[x]	[]
Central Heating	[x]	[]	Hot Water	[]	[x]
Heating Stove	[]	[x]	Light	[]	[x]
Mech. Refrigerator	[x]	[]	Ice or Refrigeration	[]	[x]
Electricity In-			Janitor Service	[]	[x]
stalled	[x]	[]	Garbage Disposal	[]	[x]
Cooking Stove	[]	[x]	Painting & Decorat-		
If any equipment is shared,			ing	[]	[x]
explain below:			Interior Repairs	[]	[x]
.....			Exterior Repairs	[]	[x]
.....			List any other services:		
.....			I paint, repair and decorate		
			at my discretion to conserve		
			prop.		

Are all equipment and services indicated above now included in the rent? Yes (x) No ()

If "No" you must also file Form D-2.

* * * * *

WARNING

The rent for this dwelling unit on and after the "effective date" can be no more than the Maximum Rent entered in Section C, Item 7, unless changed by order of the Rent Director (see Section C, Item 8).

A false statement on this form or an evasion or attempted evasion of the Maximum Rent Regulation may subject you to a \$5,000 fine or imprisonment for one year.

I Hereby Represent that all statements and entries given hereon are true and correct.

(Signed) W. E. Conrad

(Signature of Landlord or his Agent) (Date) [26]

I Certify That This Is a True and Correct Copy of the Registration in the Files of the Area Rent Control Office, Los Angeles, Calif.

Clara E. Hackle

Registration Supervisor Title

10/6/48

* * * * *

Case No. 8207 Y. West vs. Conrad. Plf. Exhibit 2.
Date 10/12/48 No. 2 in Evidence. Clerk, U. S. District
Court, Sou. Dist. of Calif. Louis J. Somers, Deputy
Clerk. [27]

[PLAINTIFF'S EXHIBIT NO. 3]

GEORGE W. MANIERRE and

PAUL G. BRECKENRIDGE

Attorneys for Plaintiff

307 West Eighth St., Suite 814,

Los Angeles 14 TRinity 7917

In the District Court of the United States, Southern
District of California, Central Division.

Mabel E. West, Plaintiff, v. W. E. Conrad and Howard
F. Conrad, Defendants. No. 8207-Y

REQUEST FOR ADMISSIONS.

To the defendants W. E. Conrad and Howard F. Conrad,
and to Leonard Wilson and Arnold L. Leader, Esqs.,
their attorneys:

The plaintiff Mabel E. West requests the defendants
W. E. Conrad and Howard F. Conrad and each of them
to admit the truth of the matters of fact set forth herein,
and to make the following admissions for the purpose of
this action only and subject to all pertinent objections to
admissibility which may be interposed at the trial.

(1) That prior to the 4th day of March, 1947, Defendant W. E. Conrad registered as a rental dwelling under the provisions of the Emergency Price Control Act of 1942 and of said Act as amended, the real property described in the lease, a copy of which is attached to plaintiff's first amended complaint and marked "Exhibit A".

(2) That said real property is and ever since said [28] registration has been registered under the provisions of the Emergency Price Control Act of 1942 and of said Act as amended and under the Housing and Rent Act of 1947 for a maximum or "ceiling" rent of seventy-five dollars (\$75.00) per month.

(3) That said real property is registered under said act as housing accomodations.

(4) That defendant Howard F. Conrad never registered said real property under the provisions of the Emergency Price Control Act or of said act as amended or under the Housing and Rent Act of 1947.

(5) That no change has ever been made in the maximum or ceiling rent of seventy-five dollars (\$75.00) per month for said real property.

(6) That said real property has always been used as housing accomodations.

(7) That said real property consists of one-half of a two-story duplex dwelling house with garage.

(8) That the other half of said duplex is occupied for residential purposes.

(9) That defendant W. E. Conrad prepared or caused to be prepared the written lease of said real property, a true copy of which lease is attached to plaintiff's first amended complaint herein marked "Exhibit A".

(10) That defendant W. E. Conrad collected the rental payments made by plaintiff for said real property as provided in said lease.

(11) That during some time subsequent to the year 1942 and prior to the 4th day of March, 1947, the real property described in the lease, copy of which is attached to plaintiff's amended complaint herein and marked "Exhibit A" was rented to a tenant or tenants other than plaintiff [29]

(11a) That such tenant or tenants paid a rental of seventy-five dollars (\$75.00) per month for said real property.

(11b) That such tenant or tenants paid a rental not in excess of seventy-five dollars (\$75.00) per month for said real property.

(11c) That such tenant or tenants rented rooms in the dwelling house described in said lease.

(11d) That such tenant or tenants or some of them kept paying guests in said dwelling house.

(12) That since the 4th day of March, 1947, defendant W. E. Conrad has paid such real property taxes as have been paid on the real property described in said lease.

(13) That defendant Howard F. Conrad has never paid any part of the real property taxes assessed against the real property described in said lease.

(14) That defendant W. E. Conrad has never paid any portion of the income from said real property nor any rental therefor to defendant Howard F. Conrad.

(14a) That defendant W. E. Conrad has the exclusive control and management of said real property leased to plaintiff.

(14b) That defendant W. E. Conrad, since the 4th day of March, 1947, has had the exclusive control and management of said real property.

(15) That defendant W. E. Conrad is the legal owner of said real property.

(16) That defendant W. E. Conrad is the equitable owner of said real property.

(17) That defendant W. E. Conrad collected from plaintiff for the rent of the real property leased by defendant W. E. Conrad to plaintiff the following sums of money as provided by the lease, copy of which is attached to plaintiff's amended complaint herein and marked "Exhibit A", viz.: [30]

Prior to the 15th day of March, 1947, the sum of seven hundred dollars (\$700.00) for the first and last months of the term of said lease;

The sum of three hundred and fifty dollars (\$350.00) on or about the 15th day of each and every month following the 15th day of March, 1947 to and including the 15th day of April, 1948.

(18) That the maximum amount of rental for said real property for the period from the 25th day of May, 1947 to and including the 25th day of May, 1948, the date of the plaintiff's first amended complaint herein, under the maximum or "ceiling" rental as set by the Office of Price Administration or the Housing Expediter, was the sum of seventy-five dollars (\$75.00) per month or a total of nine hundred dollars (\$900.00).

Said defendants are requested to admit the truth of the matters of fact hereinabove set forth on or before Thursday, August 5, 1948. In the event a sworn statement is filed by said defendants denying any of the above requested admissions, and the truth of any such matter of fact referred to in this request is subsequently proven, plaintiff will apply to said court for an order requiring said defendants to pay her the reasonable expenses incurred in making such proof, including reasonable attorneys' fees.

Dated at Los Angeles, July 23, 1948.

GEORGE W. MANIERRE and
PAUL G. BRECKENRIDGE

By G. W. Manierre

Attorneys for Mabel E. West, Plaintiff. [31]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 24, 1948. Edmund L. Smith, Clerk.

Case No. 8207-Y. West vs. Conrad. Plf. Exhibit 3. Date 10/12/48. No. 3 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk. [32]

[PLAINTIFF'S EXHIBIT NO. 3]

ARNOLD L. LEADER

LEONARD WILSON

1103 Quinby Building

650 South Grand Avenue

Los Angeles 14 VAndike 9138

Attorney for: Defendants

In the District Court of the United States, Southern District of California, Central Division

Mabel E. West, Plaintiff, vs. W. E. Conrad and Howard F. Conrad, Defendants. No. 8207-Y.

REPLY TO REQUEST FOR ADMISSIONS

To the Plaintiff Mabel E. West and to Her Attorneys George W. Manierre and Paul G. Breckenridge:

Comes now defendants W. E. Conrad and Howard F. Conrad and in reply to the Request for Admissions herein on file state that the matters of fact set forth therein as contained in paragraphs (1) through (18) are not the proper subject of inquiry or admissions by a "Request for Admissions", and further that the matters of fact therein set forth are not the matters contemplated to be admitted or denied within the provisions and contents of Rule 36 of the Rules of Civil Procedure for the District Courts of the United States, and basing their objection on this ground object to the admissibility of the replies herein contained both individually as to each reply to each of the eighteen (18) matters as set forth in plaintiff's Request for Admissions and to the same in their entirety.

Replying to the alleged matters of fact, and preserving all [33] objections thereto as heretofore stated and as to all legal and proper objections defendants admit, deny and allege as follows:

(1) Replying to Item (1) the defendants admit the truth of the facts therein contained.

(2) Replying to Item (2) the defendants admit the truth of the facts therein contained, but in this connection further allege that commencing with the month of June 1946, defendants herein removed the subject property from the rental market, and that the character of the subject premises was as of said time transformed into business property, and that at all times since the month of February 1947, the subject premises have been used for business purposes exclusively, and that at all times since said month of June 1946, the subject premises were and are within an R-5 zone as set forth by the zoning officials of the City of Los Angeles and adopted by the City Council of said city.

(3) Replying to Item (3) defendants admit the truth of the matters therein contained, but incorporate into and reply the further allegations as contained in reply to paragraph (2) thereof.

(4) Replying to Item (4) defendants admit the truth of the matters therein contained.

(5) Replying to Item (5) defendants deny the truth of the matters therein set forth.

(6) Replying to Item (6) defendants deny the truth of the matters therein contained and in this connection further allege that at all times since the month of February 1947, the subject premises have been used exclusively for business purposes.

(7) Replying to Item (7) defendants admit the truth of the matters therein contained.

(8) Replying to Item (8) defendants deny the truth of the matters therein contained, and in this connection allege that the other one-half of said duplex is occupied for both residential and business purposes. [34]

(9) Replying to Item (9) defendants admit the truth of the matters therein contained and in this connection further allege that prior to the preparation of the written lease therein referred to that plaintiff and defendant W. E. Conrad in detail discussed the terms and provisions thereof, and that in the preparation of said written lease the defendant W. E. Conrad incorporated therein certain of the suggestions and demands of plaintiff, and more particularly that defendant W. E. Conrad incorporated therein the demands of plaintiff that the subject premises be referred to and classified and designated as a "Guest Home".

(10) Replying to Item (10) defendants admit the truth of the matters therein contained.

(11) Replying to Item (11) defendants admit that during some time subsequent to the year 1942 and prior to the 4th day of March 1947, the premises located at 7462 Hollywood Blvd., in the City of Los Angeles was rented to a tenant or tenants other than plaintiff.

(11a) Replying to Item (11a) and incorporating defendants' reply to Item (11) defendants admit the matters therein contained.

(11b) Replying to Item (11b) defendants admit the truth of the matters therein contained.

(11c) Replying to Items (11c) and (11d) defendants state that he does not have sufficient information or belief upon which to form an opinion on the matters therein

contained and basing his reply on that ground denies the matters therein contained.

(12) Replying to Item (12) defendants deny the truth of the matters therein contained.

(13) Replying to Item (13) defendants deny the truth of the matters therein contained.

(14) Replying to Item (14), (14a) and (14b) defendants admit the truth of the matters therein contained. [35]

(15) Replying to Items (15) and (16) defendants admit the truth therein contained, and in this connection allege that although defendant W. E. Conrad is the legal and equitable owner of the subject premises, that for convenience only legal title thereto does at this time stand in the name of the defendant Howard F. Conrad.

(17) Replying to Item (17) defendants admit that the defendant W. E. Conrad received the rent as alleged therein.

(18) Replying to Item (18) defendants allege that during the period therein mentioned, the subject premises being at all times therein mentioned used for business purposes, and the Office of Price Administration having no jurisdiction to decree or otherwise determine a maximum rent therefor. Further replying to Item (18) and incorporating into said reply the matters herein set forth in replying to Item (2) of the Request for Admissions as herein on file, and basing their reply on the aforesaid allegations deny the truth of the matters therein contained.

The foregoing replies to plaintiff's Request for Admissions as herein on file are each and individually made over the prior objection of defendants as to the admissibility or irrelevancy and incompetency, and on the further objection being immaterial and on the further objection as being improper subject of inquiry under a Request for Admis-

sions, and under the further objection that said Request for Admissions must be limited into an inquiry of the genuineness of relevant documents, or of the truth of relevant matters of fact set forth in relevant documents in the manner and subject to the provisions and regulations of Rule 36 of the Rules of Civil Procedure for the District Courts of the United States. [36]

State of California, County of Los Angeles—ss.

W. E. Conrad, being by me first duly sworn, deposes and says that he is one of the defendants in the above entitled action; that he has read the foregoing Replies to plaintiff's Request for Admissions and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes same to be true.

W. E. Conrad

Subscribed and sworn to before me this 5 day of August, 1948

(Seal)

Leo Shapiro

Notary Public in and for said County and State.

Dated this 5th day of August, 1948.

ARNOLD L. LEADER and
LEONARD WILSON

By Arnold L. Leader
Attorneys for Defendants [37]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Aug. 5, 1948. Edmund L. Smith, Clerk.

Case No. 8207. West vs. Conrad. Date 10/12/48. No. 3 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk. [38]

[Defendants' Exhibit A]

W. E. CONRAD

7464 Hollywood Boulevard, Hollywood 46, California

Telephone HOLLYWOOD 7001

Maker of Honest Bargains

Licensed Realty Broker—Loans—Rentals

Exchanges—Insurance—Sales

REAL ESTATE

L. A. Co. Medical Journal *add*

For Sale or Lease: 7464 Hollywood Blvd. 6,500 sq. ft.
Stucco bldg., 17 rms., 6 baths. R-5 zone. Ideal for
medical group. Owner: HO 7001.

For Lease *add* similar to this ran Jan. Feb. & March
1947 In Los Angeles Times and Hollywood Citizen.

Add. in Hollywood Citizen as of Feb 3, 1947 under
business property for Lease, read, 8 Rooms suitable for
Doctors 20@ Square foot. 7464 Hollywood Blvd. Owner
Ho. 7001

Approx same *add* running Los Angeles Times 6500
Square feet all or half 20@ Square foot, as a Medical
Building.

Case No. 8207-Y Civ. West vs. Conrad. Date 10/12/48.
No. A in Evidence. Clerk, U. S. District Court, Sou. Dist.
of Calif. Louis J. Somers, Deputy Clerk. [39]

[Title of District Court and Cause]

DECISION

The above-entitled cause, heretofore tried, argued and submitted, is now decided as follows:

Judgment will be for the defendant that the plaintiff take nothing by her action against the defendants or either of them, and that the defendants do have judgment for and against the plaintiff for their costs herein.

Findings and Judgment to be prepared by counsel for the defendants under Local Rule 7.

Dated this 16th day of October, 1948.

LEON R. YANKWICH

Judge

[Endorsed]: Filed Oct. 16, 1948. Edmund L. Smith, Clerk. [40]

[Title of District Court and Cause]

OBJECTIONS TO FINDINGS OF FACT AND
CONCLUSIONS OF LAW PROPOSED BY
COUNSEL FOR DEFENDANTS: PROPOSED
AMENDMENTS THERETO, ADDITIONAL
FINDINGS AND MOTION TO INCORPORATE
SUCH AMENDMENTS AND ADDITIONAL
FINDINGS OF FACT AND CONCLUSIONS
OF LAW TO BE MADE HEREIN

To the Honorable Leon R. Yankwich, Judge of said Court:

Comes now Mabel E. West, the plaintiff herein, and objects to the findings of fact and conclusions of law proposed by counsel for the defendants, and moves the

Court to amend such findings of fact and conclusions of law and make additional findings to conform to the proofs and to determine material issues, all as hereinafter set forth.

I.

A. In line 14 of proposed finding III on page 2, after the word "that," insert the words: "for convenience only."

Note: See defendants' admission #15.

B. In line 15 of proposed finding III on page 2, after the words "Hollywood Boulevard," insert the words: "in the City of Los Angeles." [41]

Note: This amendment is required to locate the real property as being in the City of Los Angeles.

C. In lines 16, 17 and 18 of proposed finding III on page 2, strike out the words "that, however, the defendant W. E. Conrad is, and at all times in said complaint was, in possession of said premises and entitled thereto," and insert in lieu thereof the following: "that the defendant W. E. Conrad is and at all times mentioned in said complaint was the legal and equitable owner of said premises, and on or about March 4, 1947, was in possession thereof; that all negotiations and payments had and made by plaintiff were respectively with and to said defendant W. E. Conrad."

Note: This amendment is to make the findings harmonize with the undisputed evidence and with defendants' admissions #15 and #16.

II.

A. In line 5 of proposed finding V on page 3, after the word "lease" insert "and has remained in possession thereof up to and including the date of the commencement of this action."

B. In line 8 of said finding V, strike out the words "15th day of April" and insert the words "14th day of May."

Note: These amendments are required to conform to the proofs.

III.

After proposed finding V on page 3, insert the following additional findings:

A. That prior to the 4th day of March 1947, the defendant W. E. Conrad registered as a rental dwelling under the provisions of the Emergency Price Control Act of 1942 and of [42] said Act as amended, the real property described in said lease.

Note: This finding is required to harmonize with with the proof. See defendants' admission #1 and the certified copy of the registration statement in evidence as plaintiff's Exhibit "2".

B. That said real property is and ever since said registration has been registered under the provisions of the Emergency Price Control Act of 1942 and of said Act as amended, and under the Housing and Rent Act of 1947, for a maximum or ceiling rent of Seventy-five (\$75.00) Dollars per month.

Note: This is in strict harmony with the proof herein.

C. That said real property is registered under said Act as housing accommodations.

Note: This is in accordance with the proof. See defendants' admission #3 and plaintiff's exhibit "2" aforesaid.

D. That no change has ever been made in the maximum or ceiling rent of Seventy-five (\$75.00) Dollars per month for said real property, nor has any such change been requested or applied for.

Note: This was admitted and stipulated to upon the trial.

E. That prior to the 4th day of March, 1947, said real property was used as housing accommodations.

Note: This is supported by a preponderance of the evidence.

F. That since the 4th day of March, 1947, said real property has been used as housing accommodations.

Note: This is supported by a preponderance of the evidence. [43]

G. That said real property consists of one-half of a two-story duplex dwelling house with garage.

Note: See defendants' admission #7.

H. That the lease in question was prepared by the defendant W. E. Conrad.

Note: This is admitted.

I. That during some time subsequent to the year 1942 and prior to the 4th day of March, 1947, the real property described in said lease was rented to a tenant or tenants

other than plaintiff; that such tenant or tenants paid a rental not in excess of Seventy-five (\$75.00) Dollars per month for said real property.

Note: See defendants' admissions #11, 11a and 11b.

J. That such tenant or tenants rented rooms in the dwelling house described in said lease.

Note: This is supported by a preponderance of the evidence and the equivocal and evasive answers of the defendant W. E. Conrad.

IV.

Strike out proposed finding VI.

Note: This is not supported by the evidence.

V.

Strike out proposed finding VII as not supported by the evidence and substitute in lieu thereof the following: "That defendant W. E. Conrad collected from plaintiff for the rent of the property leased by defendant W. E. Conrad to plaintiff the following sums of money as provided by said lease:

"Prior to the 15th day of March, 1947, the sum of seven hundred dollars (\$700.00) for the first and last months of the [44] term of said lease;

"The sum of three hundred and fifty dollars (\$350.00) on or about the 15th day of each and every month following the 15th day of March, 1947, to and including the 15th day of April, 1948."

Note: See defendants' admission #17.

VI.

Strike out proposed finding VIII as not supported by the evidence and in lieu thereof substitute the following:

A. "That under the provisions of said Acts, plaintiff is entitled to recover of and from said defendants her reasonable attorneys' fees and costs as may be determined by the Court, plus liquidated damages in the amount of three times the amount by which the payments made by plaintiff to defendants within one year prior to the commencement of this action have exceeded the maximum rent which defendants could lawfully demand, accept or receive."

B. "That defendants are indebted to plaintiff in the sum of Nine Thousand Nine Hundred (\$9,900.00) Dollars for liquidated damages for rent paid in excess of the prescribed maximum rent as aforesaid, together with the reasonable fees of plaintiffs' attorneys and costs, as may be determined by this Honorable Court."

C. "That plaintiff was compelled to employ attorneys to represent her in this action and to that end employed Messrs. George W. Manierre and Paul G. Breckenridge, and has incurred a liability to them for their reasonable fees as such attorneys."

VII.

Strike out paragraph II of the proposed conclusions of law. [45]

Note: This is an improper conclusion.

VIII.

Strike out paragraph III of the proposed conclusions of law and in lieu thereof substitute the following:

"That defendants have violated the provisions of the Emergency Price Control Act of 1942 and of said Act as amended, and the provisions of the Housing and Rent

Act of 1947 and of said Act as amended, and that the plaintiff is entitled to have and recover from the defendant W. E. Conrad the sum of Nine Thousand Nine Hundred (\$9,900.00) Dollars as liquidated damages, together with her reasonable attorneys' fees and her costs of suit."

IX.

Strike out paragraph IV of the proposed conclusions of law and in lieu thereof substitute the following:

"This matter will be set down for hearing at an early date upon motion of the plaintiff for the purpose of determining the sum to be awarded to her as and for her reasonable attorneys' fees."

Wherefore, plaintiff prays that a date be set convenient to court and counsel for hearing these objections and proposed additional findings, and motion to incorporate such amendments and additional findings in the findings of fact and conclusions of law to be made herein, and that upon such hearing these objections be sustained and the motion of plaintiff granted.

These objections and motion of the plaintiff are most respectfully submitted.

GEORGE W. MANIERRE and
PAUL G. BRECKENRIDGE

By George W. Manierre

Attorneys for Plaintiff [46]

[Affidavit of Service by Mail.]

Objections considered and overruled, except as to I(B)
October 31, 1948.

YANKWICH, J.

[Endorsed]: Filed Nov. 1, 1948. Edmund L. Smith,
Clerk. [47]

[Title of District Court and Cause]

FINDINGS OF FACT

The above entitled cause came on regularly for trial before the Honorable Leon R. Yankwich, United States District Judge presiding, on October 12, and 13, 1948, plaintiff, Mabel E. West, appearing by her attorneys, George W. Manierre and Paul G. Breckenridge, and the defendants, W. E. Conrad and Howard F. Conrad, appearing by their attorneys, Leonard Wilson and Arnold L. Leader, and evidence having been duly introduced by each of the parties, and the Court having heard the testimony, and having examined the proofs offered by the respective parties, and the cause having been submitted to the Court for decision, and the written Memorandum of Decision having been rendered in favor of the defendants and against the plaintiff under date of October 16, 1948, now therefore, the Court makes the following—

Findings of Fact: [48]

I.

The jurisdiction of this Court arises under and by virtue of the provisions of Section 205 of the Housing and Rent Act of 1947, and as amended, which section of said act specifically confers jurisdiction upon this Court to hear and determine this matter.

II.

That at all times in the complaint mentioned, and in the amended complaint mentioned, the plaintiff and defendants were residents of the County of Los Angeles, and that all parties hereto are citizens of the State of California residing within this jurisdiction district.

III.

That the defendants, W. E. Conrad and Howard F. Conrad are brothers and that the record title of the [LRY J] City of Los Angeles, premises located at 7462 Hollywood Boulevard in the County of Los Angeles, stands in the name of Howard F. Conrad; that however, the defendant, W. E. Conrad is, and at all times in said complaint was, in possession of said premises and entitled thereto and that on or about March 4, 1947, said defendant, W. E. Conrad, entered into a written lease agreement of the aforementioned premises with the plaintiff herein, a copy of which lease agreement is attached to the complaint herein on file, and the original of which has heretofore been introduced into evidence by the plaintiff, and is presently before the Court.

IV.

That said written lease agreement, among other things, provides that the term of said lease be for the term of two (2) years commencing on the 15th day of March 1947 and ending on the 14th day of March 1949, at the total rent or sum of Eight Thousand Four Hundred (\$8,400.00) Dollars payable monthly in advance on the 15th day of each and every calendar month of said term in equal monthly installments of Three Hundred and Fifty (\$350.00) under which lease it was further provided that the leasee should deposit an additional sum of [49] Three Hundred and Fifty (\$350.00) Dollars to cover the last month of the term of said lease.

V.

That the plaintiff entered into possession of said dwelling house pursuant to the terms of said lease, and paid rent regularly to the defendant herein in the sum of Three Hundred and Fifty (\$350.00) Dollars per month for each

and every month up to and including the 15th day of April, 1948.

VI.

The Court finds that at the time of the making of said lease as heretofore mentioned, it was the mutual intention and contemplation of the parties that the premises were to be used by the plaintiff for business purposes, more particularly, for the purpose of plaintiffs conducting therein a rest home for ill and infirm persons or so-called patients of an ambulatory nature, and not for the purpose of plaintiff occupying said premises for housing or dwelling purposes within the scope of said term as used in the Housing and Rent Act of 1947, or said Act as amended.

VII.

The Court finds that the defendant, W. E. Conrad, has not demanded or accepted nor received payment of rent in excess of the maximum rent prescribed under the authority of the Emergency Price Control Act of 1942 and of said Act as amended, and as prescribed under the authority of the Housing and Rent Act of 1947.

The Court further finds by reason of the findings heretofore mentioned, that the plaintiff is not entitled to recover of and from said defendants, all attorneys' fees, nor her costs, and further that said plaintiff is not entitled to recover any monies whatsoever from the defendants, or either of them by reason of the alleged overcharge by the defendants, nor is she entitled to recover from the defendants liquidated damages in the amount of [50] three times the amount of said alleged overcharge as claimed by the plaintiff for the reason that, as aforesaid, said lease agreement by and between the plaintiff and defendant that the rents received thereunder were not within the

controls and limitations as contained in the Emergency Price Control Act of 1942, and of said Act as amended, nor under the authority of the Housing and Rent Act of 1947, or said Act as amended.

From the foregoing Findings of Fact, the Court makes the following—

Conclusions of Law:

I.

The Court has jurisdiction in the instant action.

II.

That it was not within the contemplation of the parties hereto that the subject premises be leased for housing purposes as such, but rather, that at all times in the complaint mentioned, it was the contemplation of the parties that the subject premises be used for purposes of conducting a business therein.

III.

That the defendants have not violated the provisions of the Emergency Price Control Act of 1942, and of said Act as amended, nor the provisions of the Housing and Rent Act of 1947, or of said Act as amended, and particularly that the defendants have not violated the provisions of Section 205 of the Housing and Rent Act of 1947, or of said Act as amended.

IV.

Plaintiff is entitled to no judgment of any nature against the defendants, and defendants are entitled to judgment for and against the plaintiff, and for their costs herein.

Let judgment be entered accordingly.

Dated this 1st day of November, 1948.

LEON R. YANKWICH

United States District Judge [51]

(Strike out two of the following:)

1. ~~Approved as to form.~~

2. ~~Disapproved as to form.~~

3. Receipt of copy of the foregoing Findings of Fact, and Conclusions of Law, acknowledged this 26th day of October, 1948, at 1:10 o'clock P. M. George W. Manierre and Paul G. Breckenridge, by G. W. Manierre, Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 1, 1948. Edmund L. Smith, Clerk. [52]

In the District Court of the United States
Southern District of California
Central Division

No. 8207-Y

MABEL E. WEST,

Plaintiff,

vs.

W. E. CONRAD and HOWARD F. CONRAD,
Defendants.

JUDGMENT FOR DEFENDANTS

This cause came on regularly for trial before the Honorable Leon R. Yankwich, United States District Judge presiding, on October 12 and 13, 1948; the plaintiff, Mabel E. West appearing by her attorneys, George W. Manierre and Paul G. Breckenridge, and the defendants, W. E. Conrad and Howard F. Conrad appearing by their attorneys, Leonard Wilson and Arnold L. Leader, and evi-

dence having been duly introduced by each of the parties and argued, and the cause having been submitted to the Court for decision and judgment herein, and findings of fact and conclusions of law having been made and signed and filed by the Court herein and good cause appearing therefore,

It Is Hereby Ordered Adjudged and Decreed that plaintiff, Mabel E. West, take nothing by reason of her complaint herein and that judgment on the merits be and it is hereby rendered in favor of the defendants, W. E. Conrad and Howard F. Conrad, and that the defendants recover their costs herein.

Dated this 1st day of November, 1948. [53]

LEON R. YANKWICH

United States District Judge

(Strike out two of the following:)

1. ~~Approved as to form;~~
2. ~~Disapproved as to form;~~
3. Receipt of copy of the foregoing Judgment for Defendants acknowledged this 1st day of November, 1948 at 3:45 P. M. George W. Manierre and Paul G. Breckenridge, by Paul G. Breckenridge, Attorneys for Plaintiff.

Judgment entered Nov. 2, 1948. Docketed Nov. 2, 1948. Book 53, page 644. Edmund L. Smith, Clerk, by C. A. Simmons, Deputy.

[Endorsed]: Filed Nov. 1, 1948. Edmund L. Smith, Clerk. [54]

[Title of District Court and Cause]

NOTICE OF APPEAL TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH
CIRCUIT

Notice Is Hereby Given that plaintiff, Mabel E. West, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on November 2, 1948.

Dated at Los Angeles November 29, 1948.

GEORGE W. MANIERRE and
PAUL G. BRECKENRIDGE
Attorneys for Appellant Mabel E. West
By George W. Manierre

[Endorsed]: Mld. copy to Leonard Wilson & Arnold L. Leader, 650 S. Grand Ave., L. A. 14. Filed Nov. 30, 1948. Edmund L. Smith, Clerk. [55]

[Title of District Court and Cause]

PETITION FOR ORDER EXTENDING TIME FOR
FILING RECORD AND DOCKETING APPEAL

To the Hon. Leon R. Yankwich, Judge of said court:

Your petitioner, George W. Manierre, respectfully represents that he is one of the attorneys for the plaintiff herein; that on November 30, 1948 he filed with the Clerk of this Court a notice of appeal by the plaintiff to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on November 2, 1948, and, on the same date, filed with the Clerk

of this Court a designation of the contents of record on appeal in which the Clerk was requested to prepare a transcript, including the complete record and all the proceedings and evidence in the action; that shortly thereafter your petitioner ordered Mr. H. A. Dewing, the Court Reporter assigned to your Honor's courtroom, to prepare a [58] stenographic transcript of the evidence heard upon the trial of said action to be included in the record on appeal; that your petitioner is now informed by said H. A. Dewing that the condition of his health and the calls upon his time have been such that he has not been able to prepare such transcript, and that he probably will not be able to do so before the latter part of January, 1949;

That your petitioner and his associate, Paul G. Breckenridge, Esq., have acted promptly in this matter and have in no wise contributed to delay in preparing the record on appeal herein.

Wherefore, your petitioner, acting for and on behalf of said Mabel E. West, the plaintiff and appellant herein, prays that an order may be entered herein ex parte and without notice extending the time for filing the record on appeal and docketing the appeal in said the United States Court of Appeals for the Ninth Circuit for a period of ninety (90) days from November 30, 1948, the date of filing the first notice of appeal, that is to say, to and including the 28th day of February, 1949.

All of which is respectfully submitted.

GEORGE W. MANIERRE

Petitioner [59]

[Verified.]

[Endorsed]: Filed Jan. 5, 1949. Edmund L. Smith,
Clerk. [60]

[Title of District Court and Cause]

ORDER EXTENDING TIME FOR FILING AND
DOCKETING APPEAL

This matter having come on to be heard upon the verified petition of George W. Manierre, one of the attorneys for the plaintiff herein, and the court having examined said petition, and good cause appearing therefor,

It Is Ordered that the time within which the plaintiff may file the record on her appeal in the United States Court of Appeals for the Ninth Circuit and have the same docketed there be, and the same is hereby extended for the period of ninety (90) days from the 30th day of November, 1948; that is to say, until the 28th day of February, 1949.

Dated: January 5, 1949.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Jan. 5, 1949. Edmund L. Smith,
Clerk. [61]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 61, inclusive, contain the original Complaint for Damages Under the Federal Price Control Acts, and for Attorneys' Fees and Costs; First Amended Complaint as a Matter of Course, for Damages Under the Federal Price Control Acts, and for Attorneys' Fees and Costs; Answer to First Amended Complaint; Plaintiff's 1, 2, 3 (Request for Admissions), (Reply to Request for Admissions); Defendants' Exhibit A; Decision; Objections to Findings of Fact and Conclusions of Law Proposed by Counsel for Defendants, Proposed Amendments Thereto, Additional Findings and Motion to Incorporate Such Amendments and Additional Findings in the Findings of Fact and Conclusions of Law to Be Made Herein; Findings of Fact and Conclusions of Law; Judgment for Defendants; Notice of Appeal; Designation of Contents of Record on Appeal; Petition for Order Extending Time for Filing Record and Docketing Appeal and Order Extending Time for Filing and Docketing Appeal which, together with Reporter's Transcript of Proceedings on October 12 and 13, 1948, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 24th day of February, A. D. 1949.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Title of District Court and Cause]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, October 12, 1948

Appearances:

For the Plaintiff: George W. Manierre, Esq., and Paul G. Breckenridge, Esq., Suite 814, 307 West Eighth Street, Los Angeles, California.

For the Defendants: Leonard Wilson, Esq., and Arnold L. Leader, Esq., 650 South Grand Avenue, Los Angeles, California.

Los Angeles, California; October 12, 1948;
10:00 O'Clock A. M.

MABEL E. WEST,

the plaintiff, called as a witness in her own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name?

A. Mabel E. West.

Mr. Breckenridge: Q. Mrs. West, I hand you here an instrument entitled House Lease, purporting to have been made the 4th day of March, 1947.

Mr. Wilson: This lease is admitted both by the pleadings and our stipulation.

Mr. Breckenridge: The lease is admitted, but I want to put a copy in.

Mr. Wilson: I don't care to make a formal objection.

The Court: If counsel has a lease I think it will be well to put it in.

(Testimony of Mabel E. West)

Q. By Mr. Breckenridge: I will ask you if this signature which appears on that is your signature.

A. Yes.

Q. And the signature of W. E. Conrad is the signature of W. E. Conrad? A. Yes.

Mr. Breckenridge: I would like to have this introduced.

The Court: It may be received. [3*]

The Clerk. Plaintiff's Exhibit 1 in evidence.

(The document referred to was marked Plaintiff's Exhibit No. 1 and received in evidence.)

Q. By Mr. Breckenridge: Mrs. West, will you describe briefly these premises to the court; I mean the nature of the structure, and the rooms and location.

A. The place has a living room, a dining room, a kitchen, 3 bedrooms and a breakfast nook, and 2 bathrooms, on the first floor; and a bedroom and two bathrooms on the second floor.

Q. Where is it located?

A. 7462 Hollywood Boulevard.

Q. That is between La Brea and—

A. It is the second house from the corner of Gardner and Hollywood Boulevard.

Q. What type of building is that?

A. A double house, a duplex I guess you would call it.

Q. Is it a house made up of a single house, or a double house? A. It is a double.

Q. Who lives in the other half, is one of these leased at present? A. Mr. Conrad.

Q. Who lives with him, do you know?

A. Only his family that I know of. [4]

(Testimony of Mabel E. West)

Q. Is this property close to the street or set back?

A. There is a 15 or 20 foot yard frontage.

Q. Were there any signs or advertising matter that you had in this building at any time during your occupancy?

A. No, sir.

The Court: Did you say this was a duplex?

A. Yes, sir.

The Court: An upper and lower, or side by side?

A. Side by side.

The Court: I am trying to visualize the place. Is that not the portion of the street where the land is rather high from the street level?

A. No. This was on the sidewalk level.

The Court: This used to be called Gardner Junction?

A. Yes.

Mr. Breckenridge: Gardner Junction is on Santa Monica where the streetcar crosses.

The Court: Yes.

Mr. Breckenridge: Your Honor is familiar with the Christian Science Church on the corner of La Brea?

The Court: Yes. That is where Hollywood Boulevard becomes narrow.

Mr. Breckenridge: Yes. There are no streetcars on it.

The Court: I know.

Q. By Mr. Breckenridge: Mrs. West, are you familiar [5] with the location between La Brea and Rubio and Hollywood Boulevard?

A. I am.

Q. Do you know of any store buildings, commercial buildings, or office buildings, in any of that section between La Brea and Hollywood Boulevard?

A. There are none within a mile.

(Testimony of Mabel E. West)

Q. Did you yourself occupy these premises?

A. I did.

Q. This property there? A. I did.

Q. Did anybody else occupy those premises during the time you took possession of the property to the present time? A. Yes.

Q. Who was occupying the premises with you up to the time this suit was filed in the month of May, 1948? Who was living there besides yourself?

A. Well, there were three roomers.

Q. Three roomers? A. That's right.

Q. What services, if any, did they receive from you?

A. Nothing, only the room.

Q. How about maid service? Did they make up their own beds, or did you do that?

A. No, I did not. They did their own. [6]

Q. Did you serve any meals to any of these three?

A. Yes.

Q. How did they pay you, by the day or week or month? A. Semi-monthly.

Q. Prior to that time did you have people living there with you? A. I did.

Q. Kindly tell the court who they were.

A. Mrs. Drake moved in with me.

Q. She paid you for the time she was there?

A. That's right.

Q. Did she have her meals there? A. She did.

Q. Did you make her bed?

A. She took care of her own room.

Q. Who did you have in addition to her on those premises? A. Mrs. Emery and Mrs. Dempster.

(Testimony of Mabel E. West)

Q. Mrs. West, what was the average number of people residing at the premises, including yourself, from the time you moved in up to the month of May, 1948?

A. Not over four or five.

Q. After these two ladies who occupied the premises, do you recall any other parties who lived on the premises?

A. I didn't understand your question. [7]

Q. Who was there, in addition to Mrs. Drake and Mrs. Dempster, the other lady you mentioned? In addition to them who was there?

A. Mrs. Emery.

Q. Who else lived on the premises?

A. I had a lady and her daughter who were rooming there, and after Mrs. Dempster left, I had two boys.

Q. As someone would move out, would you get someone else to live there?

A. Yes.

Q. I believe it is admitted that you paid the rent up to and including the 15th of April 1948 at the rate of \$350 per month. Subsequent to the 15th day of April, 1948, and subsequent to the filing of this action, did Mr. Conrad ever demand of you rent over and above the sum of \$75 a month?

A. I paid him \$350 per month. I don't know anything about \$75 a month.

Q. That is up to April, 1948?

A. That's right.

Q. After you filed this suit against Mr. Conrad, you quit paying him \$350 a month, after that time?

A. Yes.

Mr. Leader: We will stipulate that after the 15th day of April, when she desisted from paying \$350 a month rent, [8] the defendant asked of her \$350 a month, none of which has been received since the 15th day of April, 1948.

(Testimony of Mabel E. West)

Mr. Breckenridge: Can you stipulate to the fact that on the 15th day of May, and the next two months thereafter, the plaintiff tendered the sum of \$75 per month to your client?

Mr. Leader: We cannot accept that stipulation. We consider it immaterial whether she tendered it or not. It is not material to the issues before the court.

The Court: It is well to know the status of the account, so the court will find the amount due. This being an equity action in this court, we can determine it, as a matter of fact; we can determine the amount due, and under an equity action, you have the right to inquire the conditions, up to the time of trial, because the chancellor can determine up to the date of the trial, and the court can find facts as they appear as of the date of trial. So specifically in a case like this it is well to know the state of the account as of today.

Mr. Leader: Very well.

Q. By Mr. Breckenridge: You paid \$350 a month for each month beginning the 15th day of March, 1947, up to and including the 15th day of April, 1948?

A. I did.

Q. And, in addition, you paid a deposit of \$700, of [9] which \$350 was to pay the amount due the last month?

A. That is right.

The Court: Of what does your family consist?

A. Myself.

Q. Are you a widow or a divorcee?

A. I am divorced.

The Court: Q. From the very moment you got in there did you occupy it?

A. I did, yes.

Q. You have used it for occupancy by yourself, and shall I call them paying guests—

(Testimony of Mabel E. West)

Mr. Wilson: Your Honor, that is something the court must determine. I will have to object to the witness being allowed to answer that question.

The Court: I am asking her who paid it.

Mr. Wilson: There can be no objection to that, but whether it was occupied as a guest house or a rooming house, that will be an issue in this case, and I don't want the witness to decide it.

The Court: I will withdraw the question. Let me put this question: From the time you went in there up to the present time you have had others occupy a portion of the premises for compensation paid to you?

A. That's right.

Q. The number of such persons is what? [10]

A. Right now there are only three in the place.

Q. What is the highest number you have had?

A. Four.

The Court: I want to say this in justification of my question: From this lease, assuming it speaks verity, it speaks of occupancy as a guest home, and gives the right to sublet. So the lease having called it a guest house, any inquiry as to a guest house is permissible. I don't understand the issue is made that it was occupied as a guest house. I understand the issue is that persons who were ill, and convalescents, and such.

Mr. Wilson: Yes.

Mr. Breckenridge: I want to say that the lease says "any other lawful purpose."

Q. By Mr. Breckenridge: Mrs. West, did Mr. Conrad tell you at any time that the premises had previously been used for the purpose of renting out rooms?

A. He told me a lady, prior to me, had lived in the place, and made a good living.

(Testimony of Mabel E. West)

Q. This term "guest home" was that something you suggested or asked be put in there, or mentioned at all to him?

A. No, sir, that lease was drawn that way. I did not suggest it that way.

The Court: You never intended to go in there without sharing it with others? [11]

A. That's right. I couldn't afford it.

The Court: That was why the provision was put in, that he gave you the right to sublet it, you remember that? A. Yes.

The Court: I notice there is a provision for public liability. A. Yes.

The Court: That was put in because other people were going to be there and they wanted to be sure that they were not going to be liable? A. That's right.

Q. By Mr. Breckenridge: Did you discuss the terms and character of the liability, or was it just put in without discussion?

A. There was a discussion on liability. Mrs. Drake, after she moved in, and I moved in, took out liability in her name herself, and paid for it.

Q. Did Mr. Conrad at any time discuss the registered ceiling on this property? A. No.

Q. He told you it ran about \$75 a month?

A. I am sure if he had I would not have paid \$350.

Q. You had no knowledge of that ceiling being on there at that time? A. No, sir, I did not. [12]

Q. That is all.

(Testimony of Mabel E. West)

Cross-Examination

By Mr. Wilson:

Q. Mrs. West, at the time that you rented these premises, in March, 1947, what was your business or occupation? A. A sanitarium.

Q. You were co-owner, were you not, with your then husband, of the Holly View Sanitarium?

A. That's right.

Q. Where is the Holly View Sanitarium?

A. 867 Lucile Avenue.

Q. That is out on Sunset Boulevard? A. Yes.

Q. How long had you been operating the business of the Holly View Sanitarium with your husband?

A. I have owned it I think since 1943.

Q. Are you still operating it now? A. Yes.

Q. What is the character of the premises of the Holly View Sanitarium?

Mr. Breckenridge: I think that is very far afield.

(Discussion.)

Mr. Breckenridge. I will withdraw the objection.

The Court: You may answer. [13]

A. To take care of elderly people, as their home.

Q. By Mr. Wilson: And did you, however, yourself, use the Holly View Sanitarium for the treatment of and diseases or ailments of any kind?

A. I took care of them, as the doctor brought them there, as guest and patient.

Q. You have an ad in the classified telephone directory as follows: "Holly View Sanitarium. 24 hrs. nursing service. Excellent meals—tray service. Convalescent & elderly. Specializing in hearth & asthma. Member of Sanitarium Assn. of Calif. 867 Lucile Av., Normandie

(Testimony of Mabel E. West)

5508." That ad appears in the classified section of the Los Angeles telephone book? A. Yes.

Q. That has been in there for some time?

A. It certainly has.

The Court: You are not a registered nurse?

A. I am a graduate nurse.

The Court: You are not registered? A. No.

The Court: Q. Being on the register you would have to be open for engagement?

A. I am a graduate nurse from the Battle Creek Sanitarium.

Q. By Mr. Wilson: How did you find this place of Mr. [14] Conrad's? A. In the newspaper.

Q. What kind of an ad was it?

A. I couldn't tell you exactly, only it was a place for rent.

Q. It did not state it was business?

A. Not to my knowledge, it was not.

Q. Mrs. West, what did you tell Mr. Conrad that you intended to use these premises for, when you entered into this lease? A. For my home.

Q. Did you tell him you intended to bring from the Holly View Sanitarium convalescent cases who were not then in need of medical care? A. I did not.

Q. You made no such statement to him?

A. No.

Q. You stated you intended to use it as your home?

A. That is right.

Q. The court asked you what your family consisted of, and you stated you alone. A. That is correct.

Q. Did you intend to rent it to any roomers?

A. As I said before, the old lady, Mrs. Drake, was to live with me in the house. She was to share it. [15]

(Testimony of Mabel E. West)

The Court: And Mrs. Drake was someone else you brought there?

A. I did not. She was an old lady, and had her own property.

The Court: You knew her before you got it?

A. Yes. The reason I rented it, I was leaving the sanitarium, I had a breakdown and the doctor told me—

The Court: You can't tell that. I just asked you whether you brought her there, and you have answered.

Q. By Mr. Wilson: Your statement was that you intended to use it as your home. At that time was liability insurance spoken of?

A. No, sir.

Q. You never discussed it with Mr. Conrad?

A. No.

Q. At the time you removed to this property, a divorce suit was pending between yourself and Mr. West?

A. That's right.

Q. There was a dispute between you and Mr. West as to whether the property, known as Holly View Sanitarium, which you owned, was community property or not?

A. There was no dispute about it.

Q. Did you admit that it was community property?

A. Certainly.

Q. Did you have a conversation with Mr. Conrad as to [16] whether or not you might lose the Holly View Sanitarium, since there was a divorce suit?

A. Mr. Conrad did not know whether I was married or not.

Q. Did you tell Mr. Conrad, shortly after you got into the premises, that you were having trouble with your

(Testimony of Mabel E. West)

husband, and you wanted to borrow some money either from him, or someone else, in order to refinance a loan?

A. No, sir. I discussed this with him because he was a real estate broker, if he could sell the Holly View Sanitarium.

Mr. Manierre: What time, please?

Q. By Mr. Wilson: Approximately what time was it? A. I would say in November, 1947.

Q. You remember that in the divorce which you received in the other case, you entered into a settlement with Mr. West, after you had secured a loan sometime in January, 1948? A. That's right.

Q. After you entered into this settlement—you had previously settled with your husband, and he had no interest whatever in the business or real property on which that Holly View Sanitarium was located?

A. That's right.

Q. It was then, for the first time, you knew that your [17] husband either asserted or had an interest or claim in the business of the Holly View Sanitarium?

Mr. Breckenridge: I object—

The Court: Objection overruled. Read the question.

(Question read by the reporter.)

A. Yes.

Q. By Mr. Wilson: Did you tell Mr. Conrad, during this period of time we have just discussed, that is, in November, that you felt there was a danger of your losing the Holly View Sanitarium? A. No, sir.

Q. Did you tell him there was a possibility that your husband might be able to assert a claim and sell it, and have the proceeds divided? A. No, sir.

Q. Did you discuss with Mr. Conrad his attempt to secure a loan for you? A. I did, yes.

(Testimony of Mabel E. West)

Q. Tell us what he said.

A. He said he would try and get me a loan.

Q. By Mr. Manierre: What time?

A. In December, 1947, around Christmas time.

Q. By the Court: How did the question of a loan come up?

A. Because at that time, I thought I wanted to buy out his share, if I could make a loan. [18]

The Court: You discussed it with Mr. Conrad?

A. Yes. I talked to him about selling the property, after it was decided he could maybe get a loan on it, and buy out the share, and I could keep the property myself.

Q. By Mr. Wilson: As a matter of fact, you and your husband entered into an escrow at a branch of the Security-National Bank, for the sale of the property?

A. Yes, that is correct.

Q. You didn't get the money?

A. We didn't get the money.

Q. Did any doctor ever come to this house?

A. No, sir.

Q. Do you know Dr. Wescott?

A. I do. He was at that time my own physician.

Q. Did he ever come to the house?

A. To see me, yes.

Q. Did he ever see anybody else that you know of?

A. No.

Q. Did you never remove any patient from the Holly View Sanitarium, or from the premises, the subject of this action?

A. I did not.

A. I don't mean physically. Any who may have come to your place.

A. Two came to the sanitarium. [19]

(Testimony of Mabel E. West)

Q. What were their names?

A. Mrs. Kline and Mrs. Dempster.

The Court: That was at the beginning?

A. Two months after.

The Court: Did they remain there any length of time?

A. Both had a stroke, and had to be removed.

The Court: They were elderly persons?

A. Yes, over 70.

Mr. Wilson: That is all.

Redirect Examination

By Mr. Breckenridge:

Q. Mrs. West, a proposed escrow of the property, was that prior to the time of entering into the lease?

The Court: Which one.

Mr. Breckenridge: That was not September, 1947.

The Court: After you moved in? A. Yes.

The Court: Were divorce proceedings pending at the time of this lease, or later?

A. The divorce was pending when I moved away from the sanitarium.

The Court: How long since it had been instituted? When did you begin your divorce?

A. October, 1946.

Q. By Mr. Breckenridge: Mrs. West, have Mrs. [20] Dempster and Mrs. Kline ever received any treatment or nursing treatments from you while at your premises?

(Testimony of Mabel E. West)

A. All they received were the meals I cooked.

Q. Were they bedridden? A. No, sir.

Q. They would go out to church? A. Yes.

The Court: They were ambulatory patients?

A. I would call them just guests.

The Court: Were they patients who could take care of themselves?

A. They could take care of themselves. I just cooked the meals.

Q. By Mr. Breckenridge: They received no treatment? A. No.

Q. Were any ambulances there?

A. None except when they came to move them from the house.

The Court: I spoke of ambulatory.

A. They were.

Q. By Mr. Breckenridge: There were no drugs, medicine, physiology or any treatments of any sort ever given to these people in your home, to your knowledge?

Mr. Leader: The court was trying to make clear whether there were any ambulatory patients. [21]

A. There was no ambulance except when it came to remove them from the house to the hospital.

Q. That is all.

(Whereupon a recess was taken until 2:00 o'clock P. M. of the same date.) [22]

Los Angeles, California; October 12, 1948;
2:00 O'Clock P. M.

Mr. Breckenridge: I would like an opportunity to ask Mrs. West one or two questions I failed to ask this morning.

Further Direct Examination

By Mr. Breckenridge:

Q. Mrs. West, do you know how the telephone listing is made up of the residence occupied by you on Hollywood Boulevard, the subject of this action?

A. I do.

Q. Give us that list.

A. Mabel E. West, 7462 Hollywood Boulevard.

Q. Has there ever been any advertising in the telephone book, newspapers, or on the premises, or any advertising concerning this property or the use thereof, which you prepared, published, or printed, or anyone under your direction? A. No, sir.

Q. Was there ever any license to conduct any business on Hollywood Boulevard, sought by yourself, or applied for by you? A. No, sir.

Q. And none was ever received? A. No, sir.

Q. The sanitarium at this other location, testified [23] by you this morning, the advertising concerning that has been continuous for a number of years?

A. That's right.

Q. What is the size of the sanitarium, where you have the other address? A. Fourteen rooms.

Q. And you conducted the sanitarium there prior to meeting Mr. Conrad, and up to the present time?

A. Yes.

Q. Continuously? A. Yes.

(Testimony of Mabel E. West)

Q. You have a license there to operate that business?

A. I do.

Q. What was the condition of your health at the time you approached Mr. Conrad to lease these premises?

A. I was in very poor health, I had a breakdown.

The Court: I think the witness so stated this morning.

Mr. Breckenridge: That is all.

The Court: Any cross?

Mr. Wilson: No, your Honor.

By the Court: Q. Mrs. West, you testified that Mr. Conrad was in his office and you came and told him that you were not going to occupy it alone, is that true?

A. I and Mrs. Drake went there looking for homes. I was looking for a place to live. [24]

Q. What did you tell him you wanted it for?

A. For ourselves.

Q. For yourself and herself? A. That's right.

Q. You said this morning that nothing was mentioned about having guests or roomers. Was that mentioned at the time you talked to him?

A. The only thing was, if we could rent out other rooms, other bedrooms.

Q. Who asked him that? A. I did.

Q. You asked him if you could do that?

A. Yes.

Q. When the lease was written, that was put in and gave you the right to sublet? A. Yes.

Q. In other words, the suggestion about renting it to others came from you? A. Yes.

Q. You told him about renting to others, and asked him the right to do so, before the lease was written, is that right? A. Yes.

(Testimony of Mabel E. West)

Q. By Mr. Breckenridge: Was that before you told Mr. Conrad you couldn't pay that amount of rent, and asked him [25] if you could have roomers there?

A. Yes, that's right. I couldn't myself have paid it individually.

By the Court: Q. How many rooms were there?

A. Three bedrooms, a living room, a dining room, a kitchen, and breakfast room.

The Court: That is all. Any questions, Mr. Wilson or Mr. Breckenridge?

Counsel: No, your Honor.

The Court: Call your next witness.

Mr. Breckenridge: I was just going to introduce a document.

The Court: Go ahead.

Mr. Breckenridge: Your Honor, I would like to introduce as plaintiff's exhibit next in order what purports to be a certified copy of the registration with the Federal Housing Authority.

The Clerk: Plaintiff's Exhibit No. 2.

The Court: All right.

(The document referred to was marked Plaintiff's Exhibit No. 2 and received in evidence.)

The Court: Gentlemen, before we proceed, we had better find the date of this. The effective date is 11-1-42.

Mr. Manierre: That is right.

The Court: I think there is one matter, gentlemen, to [26] conform to the rules—the request for admissions and reply to the request have been referred to by you. They should be received or offered in evidence.

Mr. Breckenridge: I move to introduce in evidence the request for admissions and answers.

The Court: It will be received as one exhibit, 3. The request was filed July 24, 1948, and the reply was filed August 5th.

(Discussion.)

Mr. Breckenridge: I have here three checks, one for \$75 dated May 14, 1948—we can save the record by stating that the tendered checks were for \$75 for three months, May, June and July.

Mr. Wilson: That is satisfactory.

The Court: I think we should have the plaintiff here explain for the benefit of the court how she came to make a tender, and we will have the circumstances which led to her making the tender, whether it was on the advice of counsel, whether she ever talked to him. That is always material.

MABEL E. WEST

recalled, was examined and testified further as follows:

By Mr. Breckenridge:

Q. Mrs. West, I understand the rent was paid April, at the rate of \$350 per month.

A. That's right. [27]

Q. Subsequent to that date did you tender or pay any other amount for rent to Mr. Conrad?

A. I don't quite understand the question.

Q. Were there any other amounts tendered him after your payment of \$350 on May 15th?

A. Yes, I think on the 15th of May—I don't remember exactly the date—after Mrs. Drake left, the first

(Testimony of Mabel E. West)

part of May I couldn't pay my rent, and I wanted to get away from my lease. I was trying to rent the place, because I couldn't pay \$350 a month. Everybody told me it was too much rent. I went to the OPA, down to the Price Administration, and asked if there was a ceiling on that piece of property. That was when I found out what the ceiling was.

Q. That was the first knowledge you had that the registered ceiling was \$75 a month?

A. Yes. The ladies that I talked to at the OPA advised me to get a lawyer.

Mr. Wilson: I move to strike that out, your Honor.

The Court: It may be stricken out.

Q. By Mr. Breckenridge: Your tenders of \$75, that is, the tenders made in May, June and July 15th, were made upon the advice of your counsel?

A. That's right. They were returned without comment.

The Court: After you talked to this lady at the Office of Price Administration, or Housing Expediter, did you talk [28] to Mr. Conrad and tell him you had learned this, and tell him you were not going to pay any more rent, or did you just get a lawyer?

A. That's what I did.

Q. By the Court: You did not ask whether the other woman had a lease such as you had? A. No.

The Court: You merely went to the lawyer and made your tender to him? A. Yes.

Q. That is all.

ALBERT G. WESTCOTT,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Leader:

Q. Dr. Westcott, you are practicing medicine and surgery, are you? A. I am.

Q. Are you a doctor of medicine? A. An M. D.

Q. Where did you get your degree from?

A. The College of Medical Evangelists, Los Angeles.

Q. Are you engaged in the practice of your profession? [29]

A. At the present time I am at the University of California, graduate medicine; however, I have practiced in Los Angeles.

The Court: You are licensed to practice in the State of California? A. Yes.

Q. By Mr. Leader: Are you acquainted with the plaintiff, Mrs. West? A. I am.

Q. How long have you been so acquainted with her?

A. Since June, 1946.

Q. Tell the court how you became acquainted with her.

A. In January, 1946, I took over some patients who had been under the care of an elderly doctor who was retiring, by the name of Ryder. I took care of those patients at the Holly View Sanitarium.

Q. You succeeded to his practice? A. Yes.

Q. That is how you became acquainted with the plaintiff, Mrs. West? A. Yes.

Q. Have you ever treated the plaintiff personally?

A. Yes, sir.

(Testimony of Albert G. Westcott)

Q. Are you acquainted with the premises at 7462 Hollywood Boulevard? [30] A. Yes.

Q. Tell the court, please, how you first became familiar with this address, and the circumstances attending your talking with this plaintiff.

A. I can't give you the exact dates. It was approximately April, 1947.

Q. That was approximately April, 1947?

A. Yes.

Q. Where did this conversation take place?

A. At the Holly View Sanitarium.

Q. Do you recall who else was present at that conversation? A. No one.

Q. Tell the court as nearly as you remember exactly what Mrs. West said to you.

A. She was obtaining a divorce, and the procedure—

The Court: Are you stating what she told you?

A. Yes, and she was at that time attempting to divest herself of the Holly View Sanitarium. She spoke of taking some patients from the sanitarium to Hollywood Boulevard, and giving up the Holly View Sanitarium.

Q. At that time, were any of your own patients, or the patients to which you have succeeded through the other doctor you mentioned, being confined in the Holly View Sanitarium? A. Yes, one woman. [31]

Q. What was her name? A. Mrs. Dempster.

Q. Was Mrs. Dempster removed from the Holly View to the Hollywood Boulevard Sanitarium? A. Yes.

Q. With your approval? A. Yes.

Q. What kind of care was being administered to Mrs. Dempster at the Holly View Sanitarium?

A. Sanitarium care.

(Testimony of Albert G. Westcott)

Q. Can you tell us what she was suffering from?

A. High blood pressure and strokes.

Q. What was her age?

A. Approximately 78. I don't have the record with me.

Q. And your personal opinion, Doctor, was that she needed medical care? A. Yes.

Q. After she was removed from the Holly View Sanitarium to the Hollywood Boulevard Sanitarium did you continue to treat her? A. Yes.

Q. Would you say she continued to have need for medical care? A. Yes.

Q. Do you know how much money Mrs. Dempster paid to [32] Mrs. West, for the ambulatory care she received?

A. I don't have anything but hearsay as to that.

Q. You had occasion to visit Mrs. Dempster at the Hollywood Boulevard Sanitarium? A. Yes.

Q. You were told by Mrs. West that a sanitarium was being conducted there? A. Yes.

Mr. Manierre: I object to that as leading and suggestive.

The Court: Sustained. Was Mrs. Dempster capable of taking care of herself? A. She was not.

The Court: Was she capable of taking care of her room without assistance?

A. Possibly, if she so desired. She was financially independent.

Q. When you had occasion to visit Mrs. Dempster, at the Hollywood Boulevard premises, did you see any other persons there? A. Yes.

Q. Do you know by name the people you saw?

A. I met some of them, and I saw one person I knew as a patient, but I don't recall the name.

(Testimony of Albert G. Westcott)

Q. The first time *you him*, you saw him at the Hollywood [33] premises? A. Yes.

Q. You saw him in a professional capacity?

A. Yes.

Q. And you treated him? A. It was a woman.

Q. Do you recall for what you treated her?

A. I do not.

Mr. Manierre: I don't think he should relate it.

The Court: He can't answer the question anyway. You have described to me here that you found Mrs. Dempster. Incidentally, she was a patient following her stroke? A. Yes.

The Court: What did she have, a cerebral hemorrhage?

A. She was not under my care at that time.

Q. By the Court: You say you took care of her. In what condition did you find her?

A. She was in bed when I came to see her.

Q. By the Court: How many times during that period of time she was there did you see her?

A. Twice.

The Court: Each time she was in bed?

A. Yes.

The Court: Who called you?

A. Mrs. West. [34]

The Court: Was she under medication?

A. Yes, the woman took potassium.

Q. So she was under your care, your direction?

A. Yes.

Q. By Mr. Leader: This man you told us of, do you recall what you treated him for?

A. I don't. There was a man whom I met there. I couldn't be sure whether I saw him professionally or not.

(Testimony of Albert G. Westcott)

The records I have on that are in storage, and I haven't had time to dig them out.

The Court: By whom were you called to see him?

A. Mrs. Dempster.

Q. Who told you? A. Mrs. West.

The Court: She gave you his name and designation?

A. Yes, I was introduced to him.

The Court: She asked you to look him over?

A. Yes.

Q. By Mr. Leader: Did you have occasion to visit the Hollywood Boulevard premises and to observe the physical condition of other persons at those premises?

A. I saw other persons at the premises. When I saw them they were ambulatory.

Q. What was the average age of the persons you saw on those premises? [35]

A. They were all elderly persons.

Q. Did you see any blind persons?

A. Yes, there was a blind woman.

Q. Doctor, can you tell me, please, who paid you for your visit to Mrs. Dempster?

A. Mrs. West paid me. I understood she did it, from Mrs. Dempster.

Q. Were you paid for your visit to this man you have spoken of? A. No.

Q. Did you ever have a conversation with Mrs. Drake in which she told you to what use the Hollywood Boulevard premises—

Mr. Manierre: Unless she was present I would object—

(Discussion.)

The Court: I will permit this, subject to a motion to strike.

(Testimony of Albert G. Westcott)

Q. By Mr. Leader: Doctor, in your conversation with Mrs. Drake, did Mrs. Drake ever tell you to what use the premises at 7462 Hollywood Boulevard were to be put?

A. She told me it was to be used as a rest home.

The Court: When was that? A. March, 1947.

The Court: After you called at the place?

A. No, before. [36]

The Court: Where did you find out about Mrs. Drake having anything to do with the matter?

A. I visited Mrs. Drake at her home, where she resided before she moved out there.

The Court: Did Mrs. West ever mention Mrs. Drake before she moved out there?

A. No, not in this connection.

Q. By Mr. Leader: Is Mrs. Drake also a patient of yours? A. Yes.

Q. Did Mrs. Drake consult you about meeting you at 7462 Hollywood Boulevard?

A. She did not have an opportunity of meeting me for that particular purpose.

Q. Nothing further.

Cross-Examination

By Mr. Breckenridge:

Q. Dr. Westcott, you saw, these numerous times you were there, you saw a lot of people, and they were all elderly people?

A. I did not say I was there numerous times.

Q. There were also elderly people?

A. I saw several.

Q. Tell us the first time you were there?

A. At Hollywood Boulevard? [37]

(Testimony of Albert G. Westcott)

Q. At Hollywood Boulevard.

A. I should say in June, 1947.

Q. That was the first time you went there?

A. Yes.

Q. You saw Mrs. Dempster at that time?

A. Yes.

Q. At that time, at the same time, did you see Mrs. West there on that occasion?

A. Yes, I did.

Q. Did Mrs. Dempster do the room and her own bed?

A. Both, I guess.

Q. Was that a hospital bed?

A. It was a low bed of the type you ordinarily find in a bedroom. It was not a hospital bed.

Q. Was there furniture in there of a hospital nature at all?

A. Not that I recall offhand.

Q. Did you see any other rooms in the house?

A. One other.

Q. How was it furnished?

A. The same way.

Q. Did you see some physio equipment around the house?

A. I don't recall.

Q. As a matter of fact, isn't it true and Mrs. Dempster dressed and undressed herself during all of this time [38] up to the time she had a stroke?

A. Not to my knowledge.

Q. Would you say she did not?

A. I never inquired.

Q. Do you know whether she walked around and went to church?

A. I know she walked around. I don't know that she left the premises by herself.

Q. If I stated that she went to church would you say her condition permitted that?

A. I would say it was not advisable for her to do so.

(Testimony of Albert G. Westcott)

Q. When was the next time you saw her after June?

A. About October.

Q. What other calls did you make besides the one in June?

A. Those were all the calls I made to see any patient, except Mrs. West and Mrs. Drake.

Q. Is it true, Dr. Westcott, that Mrs. West discharged you from her service? A. No.

Q. Isn't it true that she discharged you on account of your alcoholism? A. No.

Q. Isn't it true that you gave up practice because of that condition? [39] A. No.

Q. Isn't it true that you went to a hospital for treatment?

A. I have been in hospital for treatment for a nervous breakdown.

Q. Isn't it true that you showed up in her sanitarium on numerous occasions intoxicated?

A. That is not true.

Q. You showed up there after you had indulged in alcoholic beverages?

The Court: His morals are not an issue, as to whether he has or not taken a drink. The doctor is entitled to protection. I want him to answer the last question. You may answer.

Mr. Breckenridge: Read it.

(The last question was read by the reporter.)

A. You want me to answer that?

The Court: Yes, if you want to. I think in justice to yourself that you ought to answer.

A. The answer is No.

The Court: You may be excused.

LUE MINOR DRAKE,

called as a witness by and on behalf of the defendants having been first duly sworn, testified as follows:

The Clerk: State your name. [40]

A. Mrs. Lue Minor Drake.

Direct Examination

By Mr. Leader:

Q. You are acquainted with the plaintiff in this action?

A. Yes, I am.

Q. When did you become acquainted with her?

A. Oh, quite a little while back, and during the time that Dr. Westcott was the doctor at the Holly View Sanitarium. I talked to her over the phone. I became acquainted with her through his calling at the Holly View.

Q. Mrs. Drake, when did you become familiar, if you have become familiar, with the premises at 7462 Hollywood Boulevard?

A. At the time Mrs. West was looking for another location and home, and I was looking for a place where I could rest, and be free from the cares of my household, and I knew that her sanitarium had a good name.

Q. When did you first hear of the premises at 7462 Hollywood Boulevard—what time, what year and what month, if you recall?

A. It was previous to March, 1947.

Q. How did you become familiar with the premises?

A. She took me out in the car to see them. She said that— [41]

Q. I did not ask you what she said.

Mr. Breckenridge: No. Say what Mrs. West told you concerning these premises at that time.

A. I think the only way I can explain it, she said, before we got there, that if she sold the Holly View she wanted a place to live and would have a rest home.

(Testimony of Lue Minor Drake)

Q. Did Mrs. West tell you how she became familiar with the premises?

A. She showed me an advertisement which Mr. Conrad said he had put in. She explained that was a good location, and it was in a district for this business. Her idea was to have a rest home when she sold her own place, and she asked me to go in business with her. I said no.

Q. Were you present at the time negotiations for this lease were pending? A. Yes.

Q. Did you hear the conversation? A. Yes.

Q. Tell us what was said by Mr. Conrad and by Mrs. West with regard to the lease.

A. In the first place, we looked the house over and the rooms that could be used. She could use the breakfast nook, the downstairs bedroom, and three upstairs rooms were very fine, almost elegant. She thought them very fine, and that it was a very fine place. She looked it over, and said, [42] "I could have a lot of people upstairs. My family will be down. I could stay downstairs."

Q. Tell the court what was said by Mrs. West and Mr. Conrad concerning the leasing of these premises.

A. Mr. Conrad said he could consider only a doctor or a nurse. He said, "I want a professional business-woman. I would consider a nurse. I think she is qualified, because she has a good rest home."

Q. Did you hear Mr. Conrad ask her if she could qualify to be a nurse? A. Yes.

Q. When did you move in? A. March 20th.

Q. When did you move out?

A. I think it was May 4, 1948.

Q. During your stay in these premises did you learn of a person by the name of Mrs. Mary Dempster?

A. Mrs. Mary Dempster.

(Testimony of Lue Minor Drake)

Q. Who was she?

A. She was a woman of some means who had suffered a stroke—at least was suffering from high blood pressure. She had been at the Holly View Sanitarium.

Q. Do you know how old she was?

A. Ninety-two, she told me.

Q. Do you know how much money she paid Mrs. West? [43]

A. \$200. I will tell you how I know. I said to Mrs. West, "Don't you think that \$350 is a little high?" And she said, "I have two patients at the Holly View Sanitarium, Mrs. Dempster at \$200 a month and Mrs. Kline at \$150 a month. That will pay the rent."

Q. Did you know Mrs. Kline?

A. Yes. She was the other lady. She also had a stroke, but at the Holly View Sanitarium she would share the room with Mrs. Drake.

Q. Are you acquainted with Mrs. Ewing?

A. Yes.

Q. Who was she?

A. She was a nurse at Mt. Sinai.

Q. Did she ever come to the Hollywood Boulevard premises? A. Yes.

Q. What did she do there?

A. She was with the patient upstairs. At that time the front room had an elderly gentleman, about 75, whom Mrs. Ewing had recommended to Mrs. West.

Q. Do you remember his name?

A. I don't remember his name.

Q. Do you know what ailment he was suffering from?

A. Old age, and the trouble that goes with it.

Q. Do you know how much he paid Mrs. West? [44]

A. Mrs. West said she was going to have \$250.

(Testimony of Lue Minor Drake)

Q. Do you know whether narcotics were administered on the Hollywood Boulevard premises?

A. She did it. He demanded it, while he was at the Holly View Sanitarium, a large part of the time.

Q. Did you know Mrs. Edward Emery?

A. Yes.

Q. Who is she?

A. Mrs. Emery had the little middle room and paid \$150 a month.

Q. She was there when?

A. Almost from the beginning.

Q. How much did she pay to Mrs. West?

A. \$150. I have seen the check.

Q. Which room did you occupy?

A. I was downstairs.

Q. This food, do you know where it is prepared?

A. In the kitchen. Mrs. West said she would not be able to do any cooking, and if I cooked for myself and Mrs. Emery I could stay. Mrs. Emery and I remained.

Q. Did you ever hear Mr. Conrad mention to Mrs. Drake anything about carrying liability insurance?

A. I don't know anything about insurance. I have heard the words, but I have no knowledge.

Q. At the first conversation with Mr. Conrad, did you [45] hear how much Mr. Conrad asked Mrs. West for the rent? A. Yes, \$350.

Q. Was anything said by Mr. Conrad in the way of offering other premises to Mrs. West?

A. Yes, he said he would vacate half of the house. He agreed to vacate the other half of the house, and open the door upstairs, so there would be communication.

(Testimony of Lue Minor Drake)

Q. Did he say how much he wanted for the entire premises?

A. I don't remember. I may have heard it, but I don't remember.

The Court: You told us about some furniture. You did not say what the furniture was.

A. I had used five or six rooms; about six rooms, half Oriental rugs.

Q. You took them over?

A. I took them over, the Oriental rugs, in the rest home.

Q. How much did you pay? A. \$100.

The Court: Did you get your own meals?

A. After she left I got my own meals and Mrs. Emery's—three meals a day.

The Court: Prior to that time you did all the cooking?

A. Sometimes the maid from the Hollywood Sanitarium [46] got the meals; sometimes Mrs. Ewing, and sometimes Mrs. West. Mrs. West was a very good cook, and a fast one.

Q. Other than Mrs. Ewing—did you ever see the old gentleman puttering around the kitchen, and preparing meals?

A. No, no one prepared meals there. The meals were in fact trays they put in the dining room.

Q. Do you know if Mrs. West ever entered into negotiations to sell Holly View?

A. I understood—this is hearsay.

Mr. Leader: We have no further questions.

(Testimony of Lue Minor Drake)

Cross-Examination

By Mr. Breckenridge:

Q. Mrs. Drake, do you remember testifying in the Superior Court action several weeks ago?

A. Yes, I remember.

Q. Do you remember testifying at that time Mr. Conrad said he would only rent them to a doctor or a lawyer?

A. Not to a doctor or a lawyer. It was to a doctor or a nurse; not to a lawyer.

The Court: He is asking if you made that statement to the Superior Court; he is saying a doctor and a lawyer.

A. I don't think I said anything of the kind because a lawyer was never considered by Mr. Conrad in my presence.

Q. By Mr. Breckenridge: I call your attention to that testimony, and do you recall my asking you if you remembered [47] any more of that conversation, and you stated that was all. A. What conversation?

Q. The conversation when you and Mrs. West were at Mr. Conrad's home.

Mr. Leader: I object to that question—

Q. By Mr. Breckenridge: Do you recall my asking you when you were on the stand in the Superior Court whether or not you remembered if there was any other conversation that you recall, between the three of you, other than the fact that he stated the property he would

(Testimony of Lue Minor Drake)

only rent for the purpose he testified, either to a doctor or nurse or doctor or lawyer? A. No lawyer.

Mr. Wilson: I object to that question—

The Court: The witness has answered.

Q. By Mr. Breckenridge: At that time you said you recalled no other conversation. Do you remember so testifying?

A. I answered the question, what he asked me, but that question does not carry any meaning. I can't gather what the man means.

Q. Mrs. Drake, this furniture you used was just in the living room downstairs?

A. It was all around the house.

Q. There was certain furniture purchased? [48]

A. Yes. Mrs. West bought furniture. You want me to tell you that?

The Court: I don't think it is material.

Mr. Breckenridge: I want to show the type of furniture that has been used in the house by Mrs. West.

Q. Do you know where that was bought?

A. She said it was bought on Main Street. She did not mention where.

Q. You were quite friendly with Mrs. West at that time? A. I am still very friendly.

Q. You are still very friendly? A. Yes.

(The court here took a short recess.)

W. E. CONRAD,

one of the defendants, sworn as a witness on his own behalf, was examined and testified as follows:

Direct Examination

By Mr. Leader:

Q. You are the owner of the premises the subject of this litigation, are you? A. Yes.

Q. At the time that has been stated, Mr. Conrad, did you offer the subject premises for lease by advertising the same in a newspaper of general circulation? [49]

A. I did.

Q. In what papers?

A. The Medical Journal, Los Angeles County, the Los Angeles Times, Hollywood Magazine.

Q. I show you an extract which reads, L. A. County Medical Journal, and ask you if that is a copy of the kind of advertisement which you caused to be published in the Los Angeles County Medical Journal.

A. That is one of them. I had three different ads.

Mr. Manierre: To which we object. There is no evidence that the defendant did see them.

The Court: Regardless of whether she saw the particular advertisement or not, I think this inquiry is material.

Mr. Manierre: We will withdraw the objection.

Q. By Mr. Leader: Is this extract a correct extract of what the L. A. County Medical Journal had?

A. Correct.

Q. Is it in form and substance the same kind of advertisement? A. It is.

Mr. Leader: May it go in?

The Clerk: A.

(Testimony of W. E. Conrad)

(The document referred to was marked Defendants' Exhibit A and received in evidence.)

Q. By Mr. Leader: When did you first meet Mrs. West? [50]

A. On the 2nd day of March, 1941.

Q. Did she make reference to the newspaper classified ad?

A. She had the newspaper with her.

Q. Had you seen her before? A. No.

Q. Did you have a conversation with her?

A. Yes.

Q. Where? A. At 7462 Hollywood Boulevard.

Q. Who were present?

A. Mrs. West and myself.

Q. Was Mrs. Drake present?

A. She was not present.

Q. State what was said by you and Mrs. West.

A. She wanted to know about the property I was advertising. I queried her to see whether she could answer to the qualifications.

Q. What was said?

A. I first asked her, to see whether she could run the business; that the property was being operated as a professional building; that I could let her have the whole property, or half.

Q. What was her reply?

A. She was interested only in the portion which comprised three thousand. [51]

Q. What was the use she was going to make of it?

A. She owned the Holly View Sanitarium, and was going to take the house for ambulatory patients. I said, "Where do you find the patients?" She said, "They are furnished to me by the doctor." After that we discussed

(Testimony of W. E. Conrad)

in detail the zoning. I got out the map and showed her the zoning, and I told her I proposed to make this a professional building. I told her what the ceiling was, and so forth, and she said she knew all about it. Then she said, "What would you take for the premises?" And offered \$350 a month.

Q. What was the date of that?

A. March 2, 1947.

Q. When was the next time you had a conversation with her? A. On March 3, 1947.

Q. What did she say on March 3, 1947?

A. She and Mrs. Drake came out there together. Both went through the property. We had a conference and it was similar to the first time she was there.

Q. Was anything further said?

A. Yes, Mrs. Drake commented on the business, the fine type of business Mrs. West had at the Holly View Sanitarium. In fact, she gave Mrs. West quite a build-up.

Q. What is your business?

A. Real estate broker. [52]

Q. For how long?

A. Since the 19th of March, 1944. Mrs. West had the nurse from the Holly View Sanitarium come to inspect the premises, and they both went over it, and said what a fine place it would be for ambulatory patients. She gave me that day \$200 deposit, and asked me to draw a lease for \$350 a month.

Q. Was that all that was said? A. Yes, about.

Q. When did you have another conversation?

A. On March 4th.

(Testimony of W. E. Conrad)

The Court: Was March 4th the time when Mrs. Drake was there?

A. March 3rd was when Mrs. Drake was there. Mrs. West gave me the money, and I turned the keys over.

The Court: Is this the lease you are talking about? (Showing same to witness.) A. Yes.

Q. The property there? A. Yes.

The Court: You drafted it yourself? A. Yes.

The Court: There is some handwriting. Is that yours?

A. Yes.

The Court: I am referring to the designation on the [53] back of the lease: W. E. Conrad, dated March 4th. A. Yes.

Q. This lease refers to the use of these premises as a guest house or any other lawful purpose. Was any conversation had between you and Mrs. West concerning this clause?

A. It was to be used for professional purposes.

Q. Was anything said by Mrs. West about the part wherein it states that it was to be used for a guest home, or any other lawful purpose?

A. She was to bring in her clientele of ambulatory patients.

Q. Did you discuss with her a guest house?

A. She asked me if I had any objection to a sign in front of the building. I said, "Certainly not, if it conforms with the ordinance of the City, and is not objectionable to the neighbors."

Q. When did you next have a conversation?

A. She wanted to redecorate the entire premises, with the possible exception of two rooms.

(Testimony of W. E. Conrad)

The Court: Go ahead.

A. As I recall, it was the following day she was over there, and asked me about painting, and the color she wanted. I told her I just had a painter paint the entire kitchen. She asked me what it would cost to get all the painting, and as I remember, it ran something like \$250 to repaint all the [54] floors and bedrooms, and after they got about two-thirds done she decided she wanted the entire thing painted, and the bathroom, and it was all painted.

Q. You have referred to a pending divorce between Mrs. West and her husband. Was that a subject of any discussion between you and Mrs. West?

A. Not until she had been there about three months. She asked me if I could help her sell the Holly View Sanitarium; she and Mr. West were getting a divorce.

Q. What did you do?

A. The first time she told me of the attorney it was in escrow. She came down and introduced attorney.

Q. What was his name?

A. I don't remember what his name was. I asked how long the escrow called for, 60 days, and they said no, "It is 90."

Q. Was that attorney Mr. Wendt?

A. That is the correct name.

Q. In Mr. Wendt's office was anything said about the lease?

Mr. Manierre: That is leading the witness.

The Court: He has a right to lead.

A. Mrs. West told Mr. Wendt I was her landlord; that I was also a real estate broker, and I was asked to see if I could help her sell the Holly View Sanitarium, and Mr. [55] Wendt—

(Testimony of W. E. Conrad)

The Court: I don't think it is necessary to go into the details.

Mr. Leader: It is only in corroboration of the testimony.

The Court: Let me ask this question: You say in certain conversations the rent was mentioned?

A. There was an OPA ceiling. Mrs. Le Grange had paid \$75 a month, which was frozen, and barely paid the taxes.

The Court: You said something about zoning.

A. I even showed her the zoning map and the city of Los Angeles classification of June, 1946, of 4-R. I told her I wasn't so sure about the second floor. That had an outside stairway, and it would not allow her to have ambulatory patients. She said she would have her foreman from the Holly View Sanitarium inspect the property, before she ever signed a lease.

Q. You said something about a sign, was a sign put up?

A. Not until after Mrs. Drake moved out. As I remember that was April, 1948.

Mr. Leader: That is all.

Cross-Examination

By Mr. Breckenridge:

Q. I believe you have been in the real estate business here for some time. [56] A. Since 1918.

Q. You prepared this lease yourself? A. I did.

Q. You had rented this property for a number of years prior to this for \$75 a month?

A. I had rented it since March, 1942, for \$75 a month.

Q. You registered this property for \$75 a month?

A. I did.

(Testimony of W. E. Conrad)

Q. You rented this property?

A. I rented it until I rented it to Mrs. West.

Q. She knew exactly what you received for it—who was the lady prior to her? A. Mrs. Le Grange.

Q. As a matter of fact, wasn't Mrs. Le Grange—

A. No. She was there on a month-to-month tenancy of \$75 a month.

Q. You don't know whether they kept roomers or not?

A. I don't know. I told Mrs. West that Mrs. Le Grange paid \$75 a month.

Q. Isn't it a fact that you caused to be prepared a notice—

A. I gave her a notice in January, 1946, that the zoning had been changed on Hollywood Boulevard, and I was going to change the classification and lease the property as business property, and that I would like to have the house [57] as early as possible.

The Court: How long did she stay?

A. Seven months.

Q. By Mr. Breckenridge: Mr. Conrad, what changes, if any, did you make, up to the present time?

Mr. Leader: We object to that as argumentative and immaterial.

The Court: Overruled.

A. I did some redecorating, some plastering.

Q. What redecorating?

A. In the kitchen, and some plastering of the wall in the kitchen, and redecorated the breakfast room.

Q. You repainted these rooms?

A. I did, in February, 1947.

(Testimony of W. E. Conrad)

Q. That is, you just repainted the walls yourself?

A. I didn't do it myself. I had it done.

Q. What did you do in that connection? Did you re-plaster the entire kitchen?

A. I replastered where the plaster had been damaged and broken in four or five different places. Also I changed some plumbing which had to be repaired.

Q. How big a patch?

A. I would say six inches to six feet.

Q. That was patching up what had been damaged?

A. Yes, that's right. [58]

Q. That was for the purpose of cleaning up and for the purpose of renting, was it? A. It was.

Q. I understand you to testify that on March 4th, when Mrs. Drake was there, the property was leased?

A. That was March 3rd, when Mrs. Drake was there; they told me to prepare the lease. It was March 4th, when the nurse and Mrs. West from Holly View came over and signed the lease. I prepared the lease the night of March 3rd, as I recall.

Q. Then you had them sign on March 4th?

A. Yes. They gave me \$200.

Mr. Manierre: \$700? A. \$500 on March 4th.

Q. By Mr. Breckenridge: You have lived right next door? A. Yes.

Q. You were in the premises from time to time?

A. Not a great many.

Q. Have you seen any physiotherapy or medical apparatus? A. I have seen a great many.

Q. How much have you seen?

A. They could hardly take care of themselves. They had help.

(Testimony of W. E. Conrad)

Q. Who had the nurse? [59]

A. An old gentleman and Mrs. Emery, who was so blind she could hardly feel her way around her room. I have seen a lady almost helpless, and one lady died there.

The Court: You don't mean Mrs. Drake?

A. I don't mean her.

Mr. Breckenridge: You say that some person was ill?

A. I was told that she died.

Q. You made no reregistration of this property?

Mr. Leader: We stipulate that he did not.

The Court: You may answer that.

A. I did not.

Q. By Mr. Breckenridge: You were particularly concerned in renting this to Mrs. West because she was a nurse?

A. She was a registered nurse, and would qualify as a professional business. We went into that very thoroughly, because I wanted to qualify it as a doctor's clinic; that is what I had in mind; but when she told me the clientele she had, I said it was satisfactory.

The Court: Q. At the time, the property was available? A. Yes.

The Court: It had been—

A. It had been vacant since February 1, 1947.

Q. By Mr. Breckenridge: It was vacant for just a month?

A. A little over a month. They left the last part of [60] January. It was vacant all of February and part of March.

Q. Did she ever tell you they would permit you to charge more than \$75 a month?

The Court: Who?

Mr. Breckenridge: Mrs. West.

(Testimony of W. E. Conrad)

The Court: She did not give any such testimony. There was no claim that subterfuge was used by either side.

Mr. Breckenridge: We claim there was.

The Court: That is what you are going to argue. Read the last question.

(Question read by the reporter.)

The Court: You will confine your answer to yes or no. A. No.

Q. By Mr. Breckenridge: Mr. Conrad, you heard Mrs. Drake testify, did you not? A. Yes.

Q. You heard her testimony in the case previous to this? A. Yes.

The Court: This is not cross-examination. You can't ask corroborative testimony of this witness.

Mr. Breckenridge: I am not trying to do so.

The Court: This is not cross-examination. I don't allow an inquiry of this character.

Q. By Mr. Breckenridge: Is it not true then that Mrs. [61] Drake is the one who said, "Mrs. West is a registered nurse," or conversation of that effect?

A. It is not. Mrs. West told me herself that she was a registered nurse. It was substantiated by Mrs. Drake. Mrs. West is the one who told me she was registered.

Q. When did she tell you that?

A. During the conversation because I wanted to be sure she would qualify.

Q. Will you say what you mean by "qualify"?

A. Acceptable.

Q. What did she tell you?

A. That she was going to run it as a very high-class rest home, a very fine home—all ambulatory patients, and that she would not take in any borderline patients.

(Testimony of W. E. Conrad)

Q. Do you know what is meant by a rest home?

A. I do. It means a home for people who are not bed patients.

Q. As stated in the provisions of the OPA, it could be used for any legal purpose whatsoever?

A. So long as it complied with the law.

Q. You state in the clause—

The Court: He has answered the question. You put it in? A. I put it in, yes.

Q. By Mr. Breckenridge: Did you at any time see any medication or treatments being given in that house? [62]

A. I brought out a hypodermic needle from the Holly View Sanitarium. What they did to that I don't know. I did not open it up. They told me it was a hypodermic needle.

Q. Who took it? A. The nurse.

The Court: You were sent there?

A. I heard some doctors were going to look at the premises, the Holly View premises. She asked me if I would stop by there when I was trying to sell the Holly View Sanitarium.

Q. By Mr. Breckenridge: Who asked you to do that?

A. Mrs. Drake.

Q. Mrs. Drake was not there?

A. I never called Mrs. Drake. I called 7462 Hollywood Boulevard. I heard some doctors were going to look at the Holly View Sanitarium.

Q. It was Mrs. Drake who told you that?

A. That's right.

(Testimony of W. E. Conrad)

Q. I understood you to say that somebody at the Holly View told you to get that.

A. The nurse at the Holly View gave it to me to take over to 7462 Hollywood Boulevard. Mrs. Drake said Mrs. West would like me to pick up the hypodermic needle, and bring it over.

Q. The nurse never asked you to? [63]

A. I said the nurse told me at the Hollywood Boulevard.

The Court: Did you ask Mrs. Drake for it?

A. Mrs. Drake apparently heard from her.

Q. By Mr. Breckenridge: You don't know what it was used for? A. No.

Q. Do you mean that anybody got medication?

The Court: He has answered that he did not know about it.

Q. By Mr. Breckenridge: Did you see any of these people?

A. Not until after she closed up and went back to Holly View.

Q. When?

A. I don't know what dates. She quit operating, I should say, as a sanitarium, in February, 1948.

Mr. Breckenridge: I object, and I will ask that be stricken out.

The Court: You are asking the question, and getting pretty far afield. I will not strike it out. He has stated it was run for that purpose. He has answered that way, so I can't strike it out.

Q. By Mr. Breckenridge: Did you use the word "sanitarium" in your negotiations? [64]

A. I asked her word to put in. She did not know what to use. I used "guest house."

(Testimony of W. E. Conrad)

Q. You say it quit operating?

A. I don't know exactly the date. It was after she got her loan. I would say it was some time in January or February, 1948.

Q. Who else, if anyone, lived in there outside of Mrs. Dempster, Miss Kline and Mrs. Emery?

A. I never took an inventory to ask the names of the patients at any time. All I have is the testimony of the patients. Some of these names I have given I got either through Mrs. West or Mrs. Drake. Otherwise I would not have known their names.

Q. You had advertised in four papers?

A. I had ads written off and on from November, 1946. I ran an ad in the Hollywood Citizen; I ran an ad in the Los Angeles Times, and the Medical Journal. I was advertising as a professional building.

The Court: Let us not go back to that.

Q. You say there was not any change in the wording of these?

A. Any real estate broker changes the ads as to real estate.

Q. All of the ads were in one, or in a series of ads?

A. They were in a series of ads. They were all advertised under business property.

Q. You did not advertise that as rental property at any time, or half of the duplex?

A. I did not. I advertised eight or seventeen rooms. They could take all or half.

(Testimony of W. E. Conrad)

Q. As a matter of fact, the ad in the Times was advertising these rooms? A. It was suitable for doctors.

Q. That is all.

Redirect Examination

By Mr. Leader:

Q. Where do you maintain your business offices?

A. At 7464 Hollywood Boulevard.

Q. That is, they are just adjacent to the subject property? A. Yes.

Q. You do not have any other office?

A. I do not.

Q. How long have you had an office there?

A. About five years.

Recross-Examination

By Mr. Breckenridge:

Q. You don't have any particular room fixed up as an office?

A. I have an alcove where the desk is, and the reception room and consultation room.

Q. Do you have furniture?

A. Yes, I have a roller top desk, where I have papers and filing cabinets, and so forth.

Q. You have a little sign there?

A. A little sign with little gilt letters, in the window, showing outside the building: W. E. Conrad, Real Estate Broker.

Q. That is all.

MELVIN BAITER,

a witness called by and on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

The Clerk: Will you please state your name?

A. Melvin Baiter.

Direct Examination

By Mr. Breckenridge:

Q. What is your present address?

A. 6840 Whitley Terrace.

Q. You formerly resided at the premises on Hollywood Boulevard occupied by Mrs. West? A. Yes.

Q. At 7460 Hollywood Boulevard? A. Yes.

Q. When did you move in there?

A. The latter part of August, 1947. [67]

Q. What was the arrangement there?

A. I rented it. I paid a monthly rental to Mrs. West for the remaining upstairs floor.

Q. You paid so much a week?

A. I and another fellow rented it, and paid every two weeks.

Q. Do you recall what you paid?

A. \$75 a month.

Q. The two of you? A. Yes.

Q. When did you leave?

A. The best I can recall, we decided to move in April of this year.

The Court: When did you move in?

A. The latter part of August, 1947.

(Testimony of Melvin Baiter)

Q. By Mr. Breckenridge: At any time you were there, did you see any people get medical treatment?

A. No, sir, I did not.

Q. From your observation, what about the other people?

A. From my observation there wasn't anything wrong with anybody. While I was living at Mrs. West's, there was a Mrs. Emery, who was partially blind, but she got about the same as everybody else did.

Q. How was your room furnished?

A. Just ordinary bedroom furniture, like you would [68] find in a bedroom.

Q. The kind you would have in your home?

A. In your own home.

Q. Did you see any medical or physiotherapy treatment or appliances around there at any time?

A. No, sir.

Q. No hospital beds, or anything like that?

A. No, sir.

Q. This gentleman that stayed with you, is this the gentleman (indicating)? A. Yes.

Q. He stayed practically all the time you were there?

A. It so happened I was away on a vacation.

Q. Mrs. West has resided there all the time you were there? A. Yes.

Q. Did you ever see Mrs. Drake around there?

A. Yes.

Q. Did you see her get any medical attention or any care of any kind? A. No, sir.

(Testimony of Melvin Baiter)

Q. You did not see them in the kitchen?

A. Yes, she did prepare meals herself, and Mrs. Emery, if Mrs. West was not there.

Q. That is all. [69]

Cross-Examination

By Mr. Wilson:

Q. What room did you occupy?

A. The room off the stairway.

Q. Do you occupy it still? A. No.

Q. What happened?

A. I got a dog and it annoyed Mrs. Drake when I was away, and it so happened there was a young fellow living in the room adjoining, and he had to move away out of the city. We discussed the matter ourselves and said we would take the room in back. We got the dog in August. I think it was after Christmas.

Q. You moved down in November?

A. No, I think it was after Christmas.

Q. What were your facilities?

A. We had a large single room.

Q. You paid the same rent you did? A. Yes.

Q. Did you do any laundry work?

A. We did our shirts and things.

Q. That is all.

Mr. Breckenridge: Will it be stipulated that Mr. Wuertz will testify to the same?

Mr. Wilson: Yes. [70]

EDNA BAKER,

a witness called by and on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Breckenridge:

Q. Tell us your name, please.

A. Edna Baker.

Q. Mrs. Baker, you are acquainted with Mrs. West, the lady sitting at the table?

A. Yes, I am.

Q. Did you reside at the premises here in suit, 7462 Hollywood Boulevard?

A. Yes, I did.

Q. Would you kindly tell us what arrangements you made there?

A. I am renting a room there. I saw a sign there and it said "Furnished Rooms." I did not know until recently that was a furnished but, anyway, I went to the door and asked if they had furnished rooms and they said yes. I went upstairs and looked. The next day I phoned that I would take the room.

Q. Do you know what year?

A. This year.

Mr. Wilson: I am going to object to any further testimony on the part of this witness because it was after the [71] lawsuit.

The Court: It goes to the admissibility.

Q. By Mr. Breckenridge: You pay the rent there?

A. Yes, I do, monthly rent.

Q. Did you see any person get any medical treatment?

A. No, sir. I am gone half of the day. There is nobody around much.

(Testimony of Edna Baker)

The Court: How much rent do you pay?

A. \$25.

The Court: For what? A. For a room.

The Court: By the week or month?

A. Per month.

The Court: How large is the room?

A. Medium size. I should judge 10 by 11 or 11 by 12.

MABEL E. WEST,

recalled in rebuttal by Mr. Breckenridge, testified further as follows:

Direct Examination

By Mr. Breckenridge:

Q. Mrs. West, you heard Mr. Conrad's testimony that at the time you were out there he showed you a zoning plan. Did he do that?

A. I never saw no plan of any kind.

Q. Did you discuss the zoning regulations of the City [72] of Los Angeles for that area at all?

A. We never had no discussion.

The Court: Did you or did you not?

A. I did not.

Q. By Mr. Breckenridge: He testified to a statement that they wanted to use it for ambulatory patients, and someone paid \$500 a month for a room, is that true?

A. It is not.

Q. As to this conversation he testified to concerning the use of the premises, and using the Hollywood Sanitarium, was it discussed at all? A. No, sir.

Q. The first time you were there, how long were you there? A. Approximately a half an hour.

(Testimony of Mabel E. West)

Q. When you returned there, I believe it has been testified the next day, or the third, with Mrs. Drake, was any thing at that time said other than what you have testified to on the stand before as to the use of these premises?

A. Mrs. Drake was not there on the 3rd or 4th. Mrs. Drake was there when I looked at the place.

Q. The first time she was there?

A. That's right.

Mr. Breckenridge. I think probably, to save the time of the court, and save the time of counsel, we can probably have [73] a stipulation that she will deny these various allegations of Mr. Conrad.

The Court: She has already done so, on cross examination. For instance, she was asked by Mr. Wilson whether she denied certain instances and she denied them. Go ahead and ask the questions, if you want to.

Q. By Mr. Breckenridge: You finally employed Dr. Albert Westcott as the doctor in connection with medical services for the Holly View Sanitarium and yourself?

A. No, I never employed him. He took over the practice of Dr. Byden.

Q. He gave you treatments?

A. Yes, he was my physician, until I discharged him.

Q. When did you discharge him?

A. May, 1947.

Q. Did you give him any reason, at the time you discharged him?

Mr. Wilson: We object to that as immaterial.

The Court: Overruled.

Mr. Breckenridge: You may answer.

A. Because he was an alcoholic, and he was not capable of being a physician or taking care of a person.

(Testimony of Mabel E. West)

Q. You told him that at the time?

A. Yes, I did.

Q. You heard some testimony in regard to Mrs. Dempster [74] being out there? A. I did.

Q. When did she leave the premises on Hollywood Boulevard?

A. It was the last day of May or the first day of June, when she was taken to the Glendale Sanitarium.

Q. That was what year? A. 1947.

Q. Was there anything wrong with Mrs. Drake's physical condition? What was her physical condition?

A. I would say she was just like any elderly person. She at one time had a stroke, and was in the sanitarium, or hospital, a couple of weeks; then she was with me at the sanitarium about a year and a half. She was going back to live in a house, on account of the sanitarium where sick people were.

Q. Did you cause her to be transported or taken to the Hollywood Boulevard address?

A. No. She came over of her own free will.

Q. Who took her over?

A. Some friend, in his car.

Q. It wasn't you who engaged him? A. No.

Q. Mrs. Cline, did you take her over?

A. No, I did not. Her daughter brought her over. [75]

Q. What was their condition?

A. They were elderly ladies, and needed a place to sleep, and take care of her that way and get her meals.

Q. At that particular time it was difficult to obtain living quarters or a house?

A. That's right. You couldn't find any place. You couldn't get no place to live.

(Testimony of Mabel E. West)

Q. It has been testified that Mrs. Dempster left there around Decoration Day of June, 1947.

A. That's right.

Q. You heard Dr. Westcott testify to coming and treating her the first day of November?

A. She left the first day of June and never returned.

Q. You used the words "guest house."

A. It is just a polite way of saying rooming house.

Q. Did you suggest the word to Mr. Conrad?

A. Mr. Conrad drew up the lease and put the words in. I had nothing to do with it.

Q. In other words, this lease was typed in your absence, and prepared for signing on the 4th?

A. That's right.

Q. Did you discuss, or ask, or suggest any term or expression used in that lease, to your knowledge?

A. I did not.

Q. In other words, you signed it as he submitted it to [76] you?

A. That's right.

Q. Did he ask you to rent it—both parts of the house? Did he discuss that at any time?

A. No, sir. I couldn't pay \$1000 a month.

The Court: Was that mentioned?

A. Not at that time.

Q. By Mr. Breckenridge: When was that mentioned—\$1000 a month rent?

A. After I lived there about two months.

Q. What was the conversation?

A. I said if he could sell my lease I will be glad to get from under this. That is how it came about.

Q. You have been in the business of running a sanitarium for a number of years?

A. Yes.

(Testimony of Mabel E. West)

Q. From your experience in running a sanitarium, would you say these premises could be used for sanitarium purposes? A. They could not.

Q. Why?

A. For several reasons, especially the den in the living room. There is a round platform to go down two steps into the living room which would be impossible for a patient or anybody else. Another thing, there are only two exits, the back door and front door. [77]

Q. Did Mrs. Drake say or suggest anything about renting these premises?

A. I only knew Mrs. Drake, and she wanted to live with me, and we went to living together, and I never thought that she was going to stay with me two years. Then she told me to buy a place, and we would all be together.

Q. She did help you with the rent by paying \$100 a month?

A. She gave me a hundred dollars a month. Not any set price to help me. She was paying rent and said, "If you cannot make out," she would be glad to pay it.

Q. That is all.

Cross-Examination

By Mr. Wilson:

Q. Then you did tell Mr. Conrad you would appreciate it if he would sell your lease? A. I did.

Q. When?

A. I wouldn't know; June or July.

Q. I understood you to say that the subject of zoning was never discussed?

A. No, it was never discussed.

(Testimony of Mabel E. West)

Q. You gave your deposition on the 8th of August, 1948, in this case. I will ask if the following questions were asked, and you gave the following answers, on page 65. [78]

"Q. Do you recall a conversation with Mr. Conrad in which you inquired whether or not you could operate an ambulatory rest home in these premises in accordance with the zoning laws of this city?

"A. No.

"Q. Do you remember asking him what the zoning restrictions were?

"A. I asked him what zone it was in.

"Q. When did you ask him that?

"A. I do not recall the date.

"Q. In the early portion of your conferences?

"A. No. I didn't ask him what zone it was. He said it was in R-4."

"Q. You had some discussions about that, did you not?

"A. No.

"Q. About what R-4 meant?

"A. No."

Does that refresh your memory as to whether or not the zoning ordinance was discussed at all?

A. It wasn't discussed. He just said it was R-4. It was mentioned.

Q. You testified as I have read? A. Yes.

Q. You did not ask him?

A. No, he said it was R-4.

Q. You had some discussion about that, did you not? [79] A. No.

Q. About what R-4 meant? A. No.

(Testimony of Mabel E. West)

Q. Mrs. West, I don't know whether I understood you correctly or not, but did you testify that before you moved to the home of Mr. Conrad you were the owner and operator of the Holly View Sanitarium, before you signed this lease? A. No.

The Court: No, she did not so testify.

Mr. Breckenridge: Q. Where were you living prior to the time you rented these premises?

A. In the tin house.

Q. What is the answer?

A. I was living on the premises of the Holly View Sanitarium, in a tin house.

Q. How long had you lived on those premises?

A. Five years.

Q. That is all.

Mr. Manierre: This other witness, may it please the court, is Mrs. West's daughter. She has a small youngster and lives in Long Beach, and we are apprehensive something may have happened to the youngster, because she is supposed to know of the hearing at this time, but she came in weekends, with her one-year-old child, to visit the mother at 7462 Hollywood Boulevard, and would testify the same as Mrs. West testified.

The Court: How old is she? [80]

Mr. Manierre: Thirty. As I say, she came in weekends, and knew about the condition, and knew that a sanitarium was not being operated there, and her testimony would be that it was never furnished up as a sanitarium, with sanitarium equipment.

The Court: She would testify that she visited the place on weekends; that it was not run as a sanitarium, in that it did not have equipment of the type concerning

which you asked the other witnesses—therapy and things like that?

Mr. Manierre: There were not any patients, and that she knows what a sanitarium is.

Mr. Wilson: I don't think your Honor should permit her to state that it was not a sanitarium. That is her conclusion.

The Court: The word "sanitarium" is unimportant. It may go out. She cannot testify that it was a sanitarium. A doctor may be able to answer the question, but a lay person cannot testify.

Mr. Breckenridge: She came up there occasionally and, as far as she observed, she observed nothing other than that it was used as a rooming house.

The Court: Why don't you stipulate that when she came there she saw people, but she did not see any people being treated on the premises?

Mr. Wilson: Yes. [81]

Mr. Manierre: Mrs. Della Rush.

The Court: Will the stipulation be the same?

Mr. Manierre: Except in one respect: These roomers came and went, and we have produced all available witnesses; but the daughter knows about that, from the inception up to the date—from March, 1947, up to the date of the commencement of this action.

The Court: Counsel has offered a stipulation, that these conditions which she observed existed from the time that Mrs. West moved in, and that these witnesses will so testify.

Mr. Wilson: I will so stipulate.

Mr. Manierre: Up to the date of the commencement of the suit.

The Court: Are those all the stipulations?

Mr. Manierre: Yes.

Mr. Breckenridge: There is just one thing. Today is a holiday, and I am willing to stipulate that we have rested except for one point—

Mr. Wilson: I was going to ask one thing: If counsel can tell me what the witness is going to testify to—

The Clerk: Has counsel rested?

Mr. Wilson: He has another witness.

Mr. Manierre: No, the case is closed.

(Whereupon an adjournment was taken until 10:00 o'clock A. M., Wednesday, October 13, 1948.) [82]

* * * * *

Los Angeles, California; October 13, 1948;
10:00 O'Clock A. M.

Mr. Breckenridge: Mrs. West had some other business to take care of, and she will be a little late.

The Court: Unless counsel desires to call her back it is not necessary for her to be present.

Mr. Breckenridge: Dr. Westcott was called yesterday, and I will state that in the month of August, 1948, Dr. Albert J. Westcott was charged and found guilty of violation of Sections 2383 and others; that he was found guilty of those charges, and was advised that the license of the medical examiners was revoked. Subsequently they suspended ruling on the revocation of his license; and that he was given probation and that that record is not yet down here. It is in Sacramento.

The Court: That merely goes to his credibility.

Mr. Manierre: That is correct.

The Court: Of course, if he has been given probation, at the end of the probationary period that record would be expunged.

Mr. Wilson: I don't know anything about these matters, but if counsel says he has made that investigation I accept it.

The Court: The record may show the facts, with whatever relevancy they have to the credibility of the witness. [84]

Mr. Breckenridge: I do that to justify my position in asking those questions yesterday. I don't want the court to think I would ask the questions unless they were relevant, and the facts were as I have asked in the question. With that understanding, then, your Honor, the plaintiff rests.

The Court: Anything further you desire to present?

Mr. Wilson: No, your Honor.

The Court: I will hear any argument you gentlemen desire to present.

(Argument.)

[Endorsed]: Filed Feb. 24, 1949. Edmund L. Smith, Clerk. [85]

[Endorsed]: No. 12194. United States Court of Appeals for the Ninth Circuit. Mabel E. West, Appellant, vs. W. E. Conrad and Howard F. Conrad, Appellees. Transcript of Record. Appeal From the United States District Court for the Southern District of California, Central Division.

Filed February 25, 1949.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12194

MABEL E. WEST,

Appellant,

v.

W. E. CONRAD and HOWARD F. CONRAD,

Appellees.

POINTS ON WHICH APPELLANT INTENDS TO
RELY AND DESIGNATION OF RECORD

Comes now the appellant in the above entitled cause and makes the following statement of the points upon which she intends to rely on appeal together with a designation of all of the record which is material for the consideration of this appeal.

(1) The Trial Court erred in not finding that at the time of the making of the lease in evidence, it was the mutual intention and contemplation of the parties that the premises were to be used by the plaintiff for the purpose of plaintiff occupying said premises for housing or dwelling purposes within the scope of said term as used in the Housing and Rent Act of 1947; and in not finding that said premises and the use thereof by plaintiff were governed and controlled by the rent control acts.

(2) The Trial Court erred in concluding that it was not within the contemplation of the parties that the sub-

ject premises be leased for housing purposes as such but rather that at all times in the complaint mentioned, it was the contemplation of the parties that said premises be used for purposes of conducting a business therein.

(3) The Trial Court erred in finding that the defendant W. E. Conrad has not demanded or accepted nor received payment of rent in excess of the maximum rent prescribed under the authority of the Emergency Price Control Act of 1942 and of said Act as amended and as prescribed under the authority of the Housing and Rent Act of 1947.

(4) The Trial Court erred in concluding that the defendants had not violated the provisions of the Emergency Price Control Act of 1942 and of said Act as amended, nor the provisions of the Housing and Rent Act of 1947 or of said Act as amended, and particularly that the defendants have not violated the provisions of Section 205 of the Housing and Rent Act of 1947 or of said Act as amended.

(5) The Trial Court erred in not finding that prior to the 4th day of March, 1947 the defendant W. E. Conrad registered as a rental dwelling under the provisions of the Emergency Price Control Act of 1942 and of said Act as amended, the real property described in the lease in evidence, and in not finding that said real property is, and ever since said registration has been, registered under the provisions of the Emergency Price Control Act of 1942 and of said Act as amended and under the Housing and Rent Act of 1947 for a maximum or ceiling rent of seventy-five dollars (\$75.00) per month.

(6) The Trial Court erred in not finding that said real property is registered under said Act as housing accommodations, and that no change has ever been made in the maximum or ceiling rent of seventy-five dollars (\$75.00) per month for said real property, nor has any such change been requested or applied for by the defendants.

(7) The Trial Court erred in not finding that prior to and since the 4th day of March, 1947, the real property described in the lease in evidence was used as housing accommodations, and that during some time subsequent to the year 1942 and prior to the 4th day of March, 1947, the real property described in said lease was rented to a tenant or tenants other than plaintiff; that such tenant or tenants paid a rental not in excess of seventy-five dollars (\$75.00) per month for said real property, and that such tenant or tenants rented rooms in the dwelling house described in said lease.

(8) The findings of the Trial Court are incomplete in that such findings fail to dispose of material issues.

(9) The findings of fact and conclusions of law of the Trial Court are not supported by the evidence.

(10) The evidence is insufficient to justify the decision of the Trial Court.

(11) That apart from any presumption provided by law, the Trial Court's findings of fact and conclusions of law were clearly erroneous in the light of the stipulated evidence and the uncontradicted testimony of the witnesses.

(12) The judgment of the Trial Court is against the law.

(13) The Trial Court erred in rendering judgment in favor of the defendants and against the plaintiff.

(14) The Trial Court erred in failing to render judgment in favor of plaintiff and against the defendants as prayed.

* * * * *

MABEL E. West

Appellant

By GEORGE W. MANIERRE and
PAUL G. BRECKENRIDGE

Her Attorneys

By George W. Manierre

March 2, 1949.

[Affidavit of Service y Mail.]

[Endorsed]: Filed Mar. 3, 1949. Paul P. O'Brien,
Clerk.

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